

**US 221**

Proposed Rutherfordton Bypass  
From US 74 Bypass to SR 1366 (Roper Loop Road)  
Rutherford County  
State Project 8.1891001  
WBS Element 34400.1.2  
**TIP Project R-2233B**

ADMINISTRATIVE ACTION

N. C. DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

**STATE RECORD OF DECISION**

In Compliance with the North Carolina Environmental Policy Act



OCTOBER 2013

Additional Information regarding this action may be obtained by contacting:

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## **PROJECT COMMITMENTS**

US 221

Proposed Rutherfordton Bypass

From US 74 Bypass to SR 1366 (Roper Loop Road)

Rutherford County

State Project 8.1891001

WBS Element 34400.1.1

**TIP Project R-2233B**

### **Project Development and Environmental Analysis Unit/Roadway Design Unit**

NCDOT will coordinate with local officials as the proposed project progresses regarding the status of local greenway plans and proposed walking trails.

### **Project Development and Environmental Analysis Unit-Natural Environment Section**

The project will be resurveyed for the federally-protected dwarf-flowered heartleaf prior to construction.

Dwarf-flowered heartleaf plants that will be impacted by the project will be transplanted to the Tate property conservation area.

### **Project Development and Environmental Analysis Unit-Historic Architecture Group**

Prior to the initiation of construction, NCDOT will record the existing condition of Ruth Elementary School in accordance with the Historic Structures and Landscape Recordation Plan. Copies of the documentation will be deposited in the files of the State Historic Preservation Office and the files of the Historic Architecture Group of NCDOT.

NCDOT will compile a historic context documenting the history of Consolidation-Era public schools within Rutherford, Polk and Cleveland counties. The context will compile documentary materials, bibliographical sources, National Register eligibility considerations and digital images. The final report will be in a digital format and will be provided on a CD-ROM to the State Historic Preservation Office. Another copy of the report will be deposited in the files of the Historic Architecture Group of NCDOT. The final digital product will be completed and distributed within three years of the execution of the Memorandum of Agreement regarding the project's adverse effects on Ruth School.

**Project Development and Environmental Analysis Unit-Historic Architecture Group/Rutherford County**

The Rutherford County Manager will establish a committee to oversee the development of an adaptive use plan for the campus and buildings of Ruth Elementary School within six months of the filing of the Memorandum of Agreement regarding the project's effects on Ruth School. Members of the committee shall include representatives from the State Historic Preservation Office and the Historic Architecture Group of NCDOT along with municipal staff and local citizens with a demonstrated interest in the school and its potential redevelopment.

NCDOT will provide funds not to exceed \$10,000 for use by the committee to accomplish the following tasks: identify and analyze the issues associated with reusing the structures and campus, develop alternatives for consideration and produce an adaptive reuse plan for the site. If the Rutherford County Manager chooses not to establish the committee, no funds will be available for this study.

**Project Development and Environmental Analysis Unit-Traffic Noise and Air Quality Group/Public Involvement and Community Studies Group/Roadway Design Unit**

For the proposed bypass, five noise barriers were determined to be feasible and reasonable. Property owners and residents of all the noise receptors that would benefit from construction of the five likely noise barriers will be sent ballots to allow them to vote on whether or not they want the noise barrier that would benefit their property or residence. Consideration of the noise barriers will continue unless a simple majority of the distributed points are returned indicating the balloted voters do not want the abatement measure.

**Roadway Design Unit**

2:1 side slopes will be used at all stream crossings, wetlands and at dwarf-flowered heartleaf sites along the project.

A portion of existing SR 1537 (Water Works Road) will be left in place to provide access to a Town of Rutherfordton lift station located northeast of the SR 1536 (Old US 221)/SR 1537 intersection.

Access will be provided to a Town of Rutherfordton lift station located in the southwest quadrant of the proposed US 74 Business-US 221 Alternate (Charlotte Road) interchange with the bypass.

ADA-compliant pedestrian crossings will be provided at the intersection of US 64 with US 74A (Railroad Avenue) and at the Overmountain Victory National Historic Trail crossing of the proposed SR 1520 (Rock Road) realignment.



A sidewalk will be constructed on the south side of US 64 from the intersection of US 64 with US 74A to the proposed driveway to Ruth and Trinity Schools, in order to accommodate the Overmountain Victory National Historic Trail.

NCDOT will provide access between the proposed sidewalk along US 64 and Southern Street via a pathway from the vicinity of the relocated driveway for Ruth and Trinity schools in order to accommodate pedestrians who wish to follow the historic route of the Overmountain Victory National Historic Trail. NCDOT will design this pathway for pedestrian use and construct it in a manner that is ADA compliant to the greatest extent possible.

NCDOT will continue to coordinate with the Overmountain Victory National Historic Trail and the SHPO regarding the trail by providing post-hydraulic design plans to the parties with a 30-day review and comment period.

### **Structure Design Unit**

A sidewalk and 42-inch hand rails will be provided on the south side of the proposed bridge carrying US 64 over the bypass, in order to accommodate the Overmountain Victory National Historic Trail.

### **Roadway Design Unit/Division Thirteen/Signing and Delineation Unit**

NCDOT will install signage provided by the Overmountain Victory National Historic Trail to mark and indicate the status of the pathway as an official portion of the trail. The number of signs and their location will be determined in consultation with the Trail and in accordance with NCDOT policy.

### **Roadway Design Unit/Structure Design Unit/Transportation Program Management Unit/Town of Rutherfordton**

The Town of Rutherfordton has requested decorative murals or etches be provided on some of the structures for the proposed bypass. The Town will provide NCDOT with the location of the suggested treatments and drawings or photographs depicting the etches or murals.

NCDOT will evaluate the practicality and cost of the etches or murals and provide the anticipated cost to the Town. If practical, these decorative treatments will be included in the project if the Town will agree in writing to fund the treatments prior to the final design field inspection for R-2233BA.

A municipal agreement will be prepared prior to project construction regarding the Town's funding the additional cost for the murals or etches on structures.

**Roadway Design Unit/Roadside Environmental Unit/Division Thirteen/  
Transportation Program Management Unit**

The Town of Rutherfordton has requested landscaping as a part of the proposed project. NCDOT will coordinate further with the Town regarding landscaping during the preparation of right of way and construction plans for the project.

A municipal agreement will be prepared prior to project construction regarding any maintenance responsibilities the Town may have for landscape plantings.

**Roadway Design Unit/Transportation Program Management Unit/Town of  
Rutherfordton**

The Town of Rutherfordton has requested decorative traffic signal poles be provided at locations where traffic signals are proposed. NCDOT will coordinate with the Town during preparation of project plans regarding decorative options for signal poles and the locations where the Town would like decorative poles.

A municipal agreement will be prepared prior to project construction regarding the Town's funding the additional cost for decorative traffic signal poles.

**Hydraulics Unit/Natural Environment Unit**

Prior to the Concurrence Point 4B NEPA/404 merger team meeting, the merger team will review Streams 2UT1C and 1N to determine if additional minimization is feasible.

**Hydraulics Unit**

The Hydraulics Unit will coordinate with the NC Floodplain Mapping Program (FMP) for approval of a Conditional Letter of Map Revision (CLOMR) and subsequent final Letter of Map Revision (LOMR) for each new crossing of a FEMA regulated stream.

**Division 13 Construction**

This project involves construction activities on or adjacent to FEMA-regulated stream(s). Therefore, the Division shall submit sealed as-built construction plans to the Hydraulics Unit upon completion of project construction, certifying that the drainage structure(s) and roadway embankment located within the 100-year floodplain were built as shown in the construction plans, both horizontally and vertically.

In the event unanticipated archaeological discoveries, such as unmarked cemeteries, are made during construction, the NCDOT Archaeology Group will be notified and consulted immediately for any necessary resolution or coordination with the State Historic Preservation Office, prior to any additional construction work in that area.

**Location and Surveys Unit/Roadway Design Unit**

Unmarked graves are believed to be located behind the church building on the Mountain View Baptist Church property. The church is located on 2<sup>nd</sup> Street in Rutherfordton. Efforts will be made to locate these graves and avoid them if practicable during final surveys and design for the project.

**Roadside Environmental Unit/Division 13 Construction**

NCDOT's native seed mix will be used throughout the project in riparian areas, where possible.

## **1.0 DECISION**

The proposed action involves constructing the US 221 Bypass of Rutherfordton, in Rutherford County. NCDOT selects the preferred alternative, Alternative 3, as the proposed action for this project.

The proposed bypass will be constructed as a four-lane roadway with a 46-foot median. Portions of the bypass will be constructed on new location. Full control of access will be obtained for new location sections of the bypass. Partial control of access (one access per parcel with no other access) will be obtained for sections of the project along existing roadways. The proposed project is approximately 8.5 miles long.

This project is identified as project number R-2233B in the approved 2012-2018 State Transportation Improvement Program (STIP). The initial right of way acquisition and construction for the project are scheduled for state fiscal years 2016 and 2021, respectively, in the draft 2013-2023 NCDOT Program and Resource Plan.

The purpose of the project is to reduce congestion, improve safety, and improve travel time for traffic using the US 221 corridor in the vicinity of Rutherfordton.

## **2.0 ALTERNATIVES CONSIDERED**

Preliminary alternatives considered for the project included the following:

- No-Build Alternative
- Alternate Modes of Transportation
- Improve Existing Facility
- Construct Bypass

It was determined the No-Build Alternative and alternate modes of transportation would not fulfill the purpose and need for the project. Also, improving the existing facility through downtown Rutherfordton would have excessive impacts to the National Register-listed Downtown Rutherfordton Historic District. Therefore, these alternatives were eliminated from further consideration. Based on the initial evaluation, only the Bypass Alternative was determined to meet the goals of the proposed project.

A total of nine bypass alternatives were investigated for this project (see Figure 2). Of these, four alternatives were selected for detailed study. These four alternatives are shown on Figures 1 and 3. Table 1 presents a comparison of the detailed study alternatives.

**Table 1**  
**Detailed Study Alternatives Comparison**

	<b>Alternatives</b>			
	<b>3</b>	<b>4</b>	<b>6</b>	<b>US 74A</b>
<b>Residential Relocatees</b>	99	163	91	88
<b>Business Relocatees</b>	27	43	26	32
<b>Wetlands Affected (Ac.) (Delineated)</b>	0.8	0.6	1.3	0.7
<b>Stream Impacts (Ft.)</b>	12,063	8,734	13,113	9,200
<b>Dwarf-Flowered Heartleaf Impacts (Sq Ft.)</b>	371.5	172.3	371.5	371.5
<b>Impacted Noise Receptors</b>	9	0	0	2
<b>Length New Location (Miles)</b>	7.2	4.3	8.3	3.8
<b>Total Length (Miles)</b>	8.5	9.3	9.4	8.7
<b>Total Cost (Million)</b>	\$223.0	\$219.0	\$234.0	\$200.0

Impacts and costs based on field surveys and design at time of selection of the preferred alternative (February 2010). The design, impacts and costs of the selected alternative (Alternative 3) have been updated since that time and may differ from the information presented here.

### **3.0 SELECTED ALTERNATIVE**

Alternative 3, described in Appendix A and shown on Figure 2, is the recommended alternative for the proposed US 221 Rutherfordton Bypass.

Alternative 3 was selected for this project for the following reasons:

- Alternative 3 would affect fewer homes and businesses than Alternative 4.
- Alternative 3 would affect less wetlands and streams than Alternative 6.

Although Alternative 3 would affect more wetlands and streams and relocate more homes than Alternative US 74A, Alternative 3 has the following advantages over Alternative US 74A:

- Alternative 3 provides a higher level of service than Alternative US 74A (level of service B versus D).
- Alternative 3 potentially provides increased safety.

- Alternative 3 will provide a lower travel time for motorists using US 221 in the project area than any of the other alternatives.
- Alternative 3 has less potential for indirect and cumulative impacts than Alternative US 74A. No access will be provided along Alternative 3 between US 74 Business-US 221A and US 64, while one access per property will be provided in this area with Alternative US 74A.
- Alternative US 74A will relocate 30 percent (9 of 30) of the businesses within the Town of Ruth and may require the relocation of the largest employer in Ruth. Alternative 3 will only affect five businesses within Ruth.
- Most comments from citizens and local officials after the public hearing have been in favor of Alternative 3.

The NEPA/404 merger team concurred with the selection of Alternative 3 at a merger team meeting held on February 17, 2010. The selection of Alternative 3 for the proposed bypass was announced to area residents by a newsletter sent out in March 2010.

#### **4.0 MEASURES TO MINIMIZE HARM**

During development of Alternative 3, the following changes were made to the proposed design in order to minimize impacts to wetlands and streams:

- The design of the proposed interchange with existing US 221 south of Rutherfordton was changed from a diamond interchange to a half-cloverleaf interchange. No ramps are proposed in the northern quadrants of the interchange. This design change will reduce stream impacts by 375 feet.
- The bridge over SR 2201 (Thunder Road) was extended by approximately 500 feet to bridge Stonecutter Creek and an unnamed tributary to Stonecutter Creek (Stream 1E). This design change will reduce stream impacts by 1,111 feet and wetland impacts by 0.02 acre.
- 2:1 side slopes are proposed in jurisdictional areas and in areas containing the federally-protected dwarf-flowered heartleaf.
- The design of the ramp in the northeast quadrant of the proposed US 64 interchange was changed. The ramp will now more closely follow the alignment of the proposed loop. This change will reduce stream impacts at this location by approximately 243 feet. This change in the design was made prior to selection of Alternative 3.
- The alignment of the proposed connection between SR 1536 (Old US 221) and SR 1520 (Rock Road) has been changed to avoid Holland's Creek (2K) and an unnamed tributary (UT2K). This design change will reduce stream impacts by approximately 288 feet at this location.

The NEPA/404 merger team concurred on avoidance and minimization measures for the project at a meeting held on April 14, 2011.

Additional measures to minimize harm proposed include:

- The project will be resurveyed for the federally-protected dwarf-flowered heartleaf prior to construction.
- Dwarf-flowered heartleaf plants that will be impacted by the project will be transplanted to the Tate property conservation area.
- Prior to the Concurrence Point 4B NEPA/404 merger team meeting, the merger team will review Streams 2UT1C and 1N to determine if additional minimization is feasible.

Additional minimization measures will be considered as the project progresses.

## 5.0 CONCLUSION

This final statement is in conformance with applicable provisions of the North Carolina Environmental Policy Act and satisfactorily describes the anticipated environmental impacts, including physiographic and cultural effects. Comments on the SFEIS have been reviewed, and no new substantive issues or impacts were identified; therefore, the SFEIS remains valid. All avoidance and minimization measures identified in the SFEIS will be incorporated into the project.

Based on the analysis and evaluation contained in this project's SFEIS and after careful consideration of all social, economic and environmental factors and input from the public involvement process, NCDOT selects the preferred alternative, Alternative 3, as the proposed action for this project.

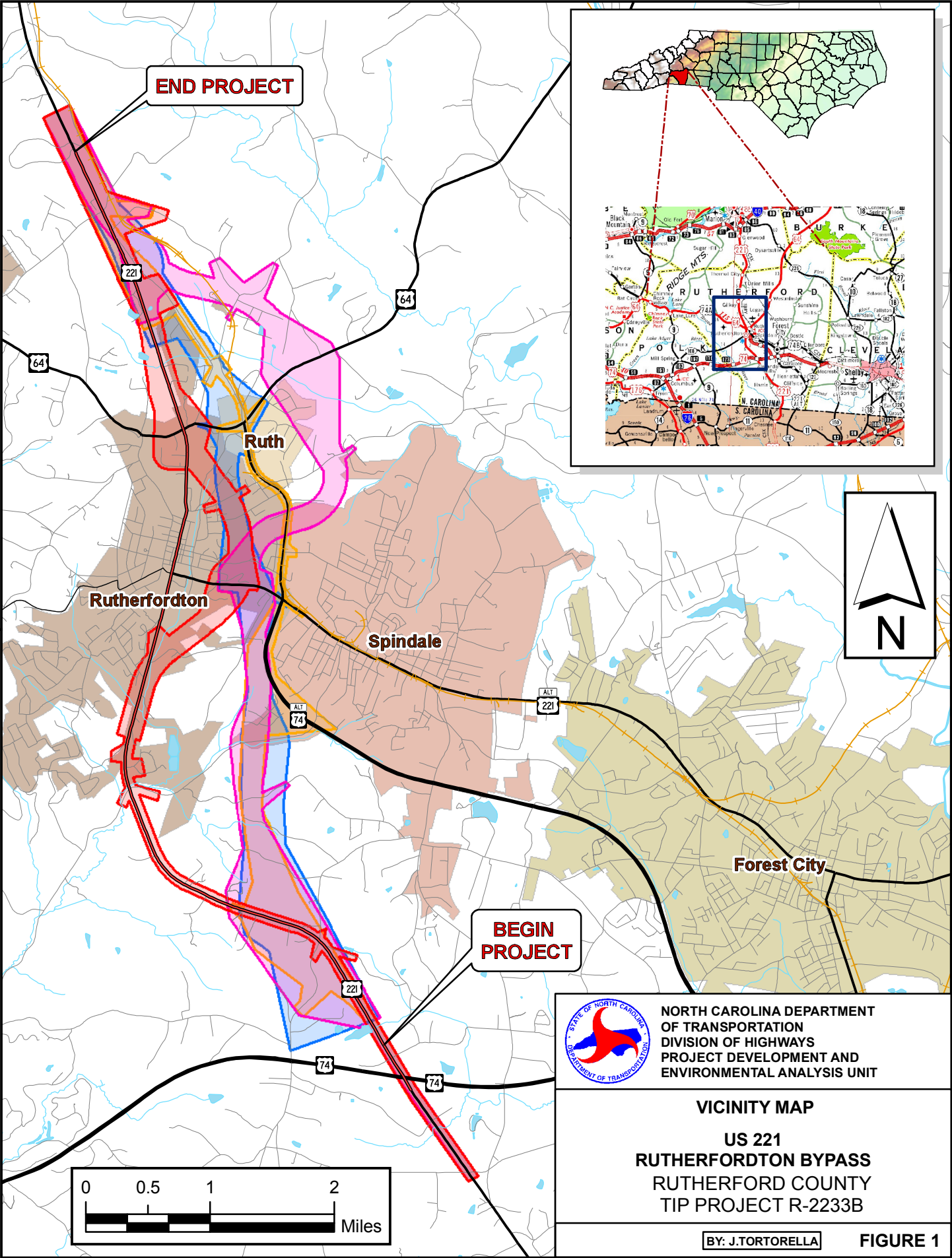
10/30/2013

Date

For

DocuSigned by:  
*Jennifer Harris*  
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Richard W. Hancock, PE  
Manager  
Project Development and Environmental Analysis Unit  
North Carolina Department of Transportation

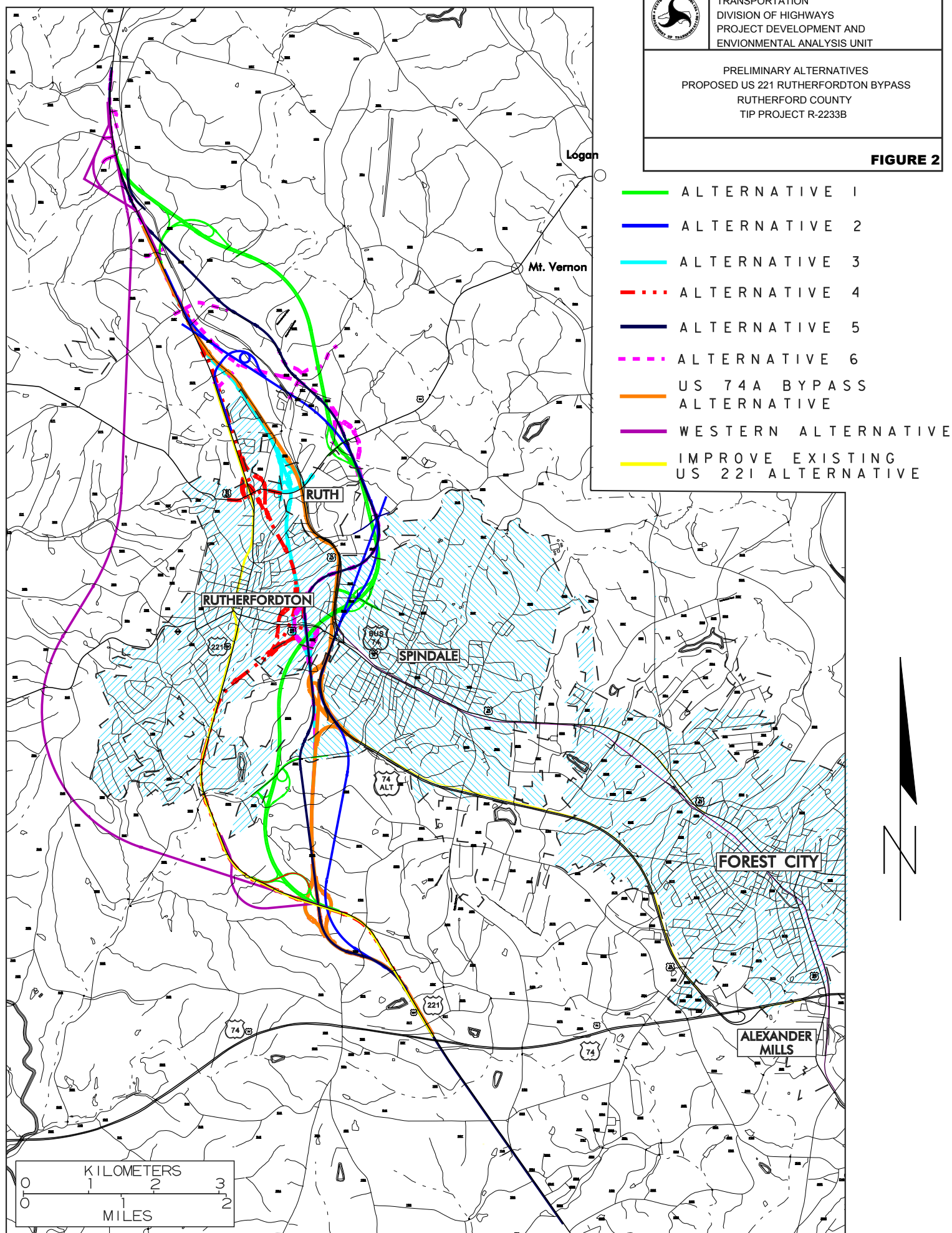




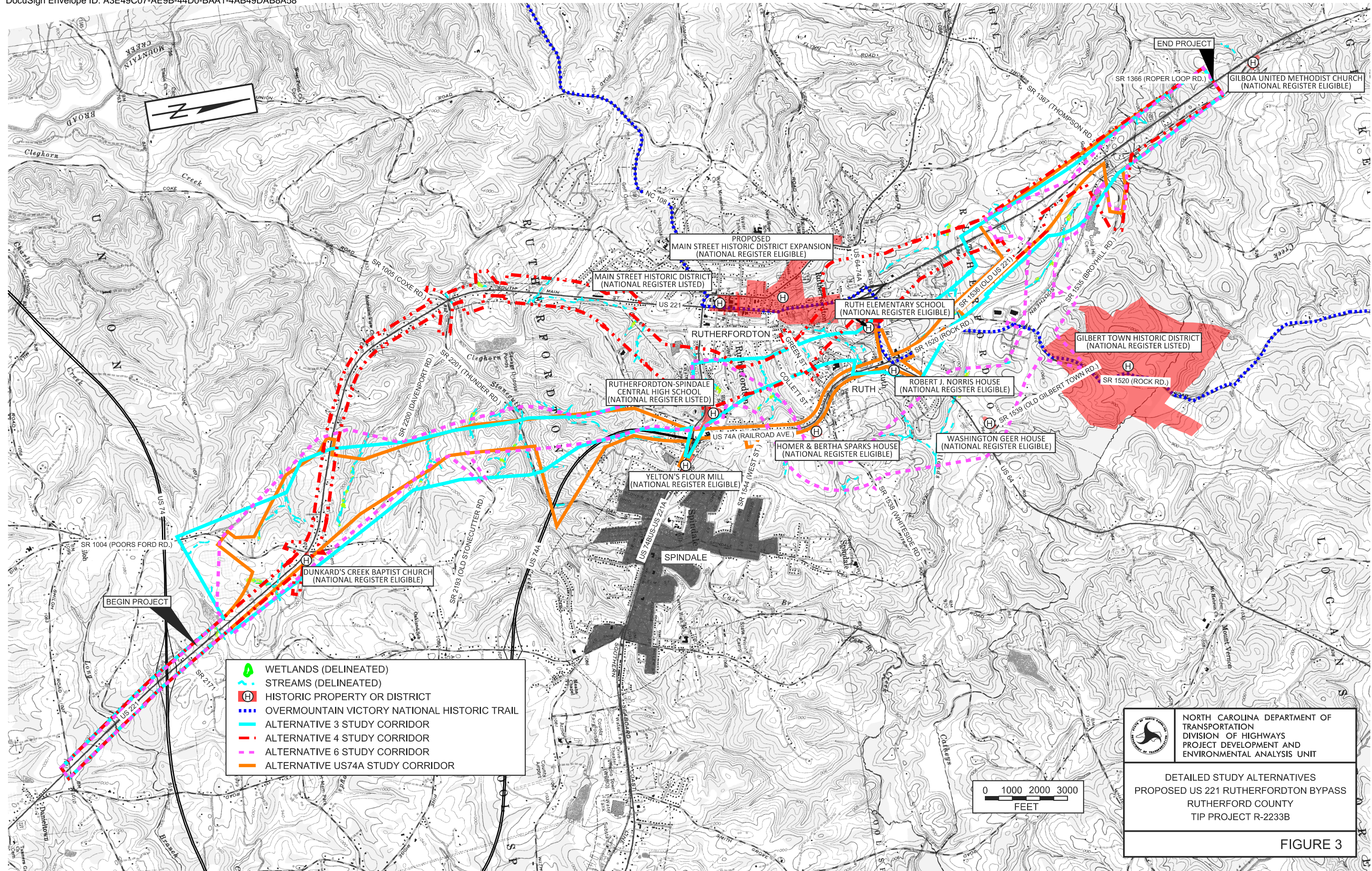


NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION  
DIVISION OF HIGHWAYS  
PROJECT DEVELOPMENT AND  
ENVIRONMENTAL ANALYSIS UNIT

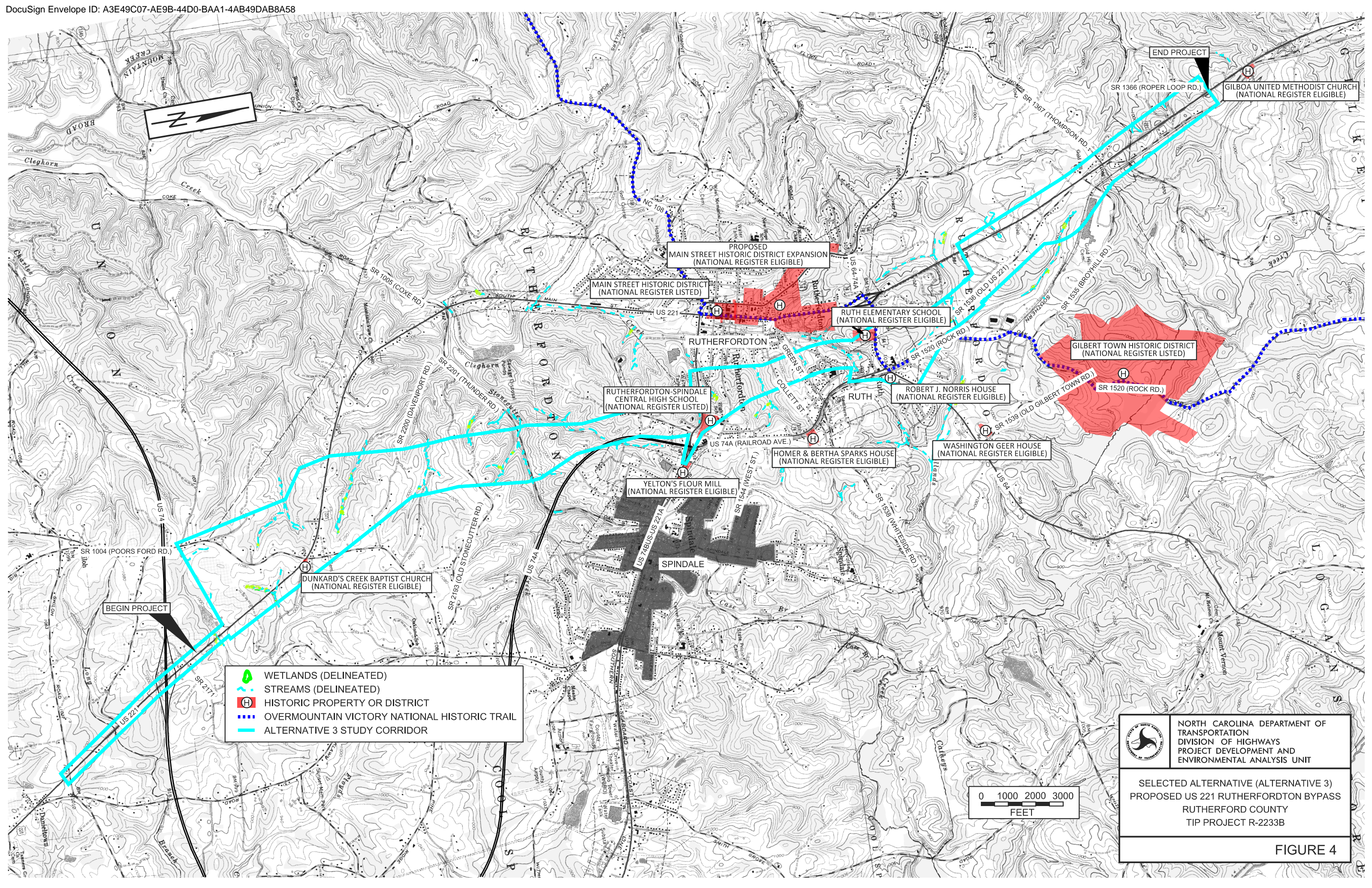
PRELIMINARY ALTERNATIVES  
PROPOSED US 221 RUTHERFORDTON BYPASS  
RUTHERFORD COUNTY  
TIP PROJECT R-2233B

**FIGURE 2**











## **APPENDIX A**

### **DESCRIPTION OF THE SELECTED ALTERNATIVE**

## **APPENDIX A**

### **DESCRIPTION OF THE SELECTED ALTERNATIVE**

#### **Description**

Alternative 3 involves widening a portion of existing US 221 and constructing a bypass on the east side of Rutherfordton. Existing US 221 would be widened to four lanes with a median from US 74 Bypass to south of SR 2194 (Poors Ford Road). From south of SR 2194 to existing US 221 north of Rutherfordton, a bypass on new location would be built around the east side of Rutherfordton. This new location roadway would cross SR 2194, existing US 221 south of Rutherfordton, SR 2193 (Old Stonecutter Road), SR 2201 (Thunder Road), US 74 Business/US 221 Alternate (Charlotte Road), Green Street and US 64 before connecting back with existing US 221 at SR 1536 (Old US 221) north of Rutherfordton. US 221 would then be widened from SR 1536 to SR 1366 (Roper Loop Road). The total length of Alternative 3 is 8.5 miles.

Grade separations will be provided at Poors Ford Road, Old Stonecutter Road, Thunder Road and Green Street. No access to the bypass will be provided from these roadways. Interchanges will be constructed at existing US 221 south of Rutherfordton, US 74 Business/US 221 Alternate and US 64. North of US 64, the proposed bypass will transition to an expressway facility. A "superstreet" design is proposed. Left turns onto the bypass will not be allowed, but left turns from the bypass will be accommodated at directional median crossovers. Median crossovers and wider pavement will also be provided in some locations between intersections in order to accommodate u-turns. At-grade intersections and directional median crossovers are proposed at Old US 221, existing US 221, SR 1367 (Thompson Road) and the northern intersection of Roper Loop Road.

A 70 MPH design speed is proposed for portions of the project on new location. A 60 MPH design speed is proposed for portions of the project which involve widening existing US 221.

The roadway typical section will be a four-lane roadway with a 46-foot median. Twelve-foot lanes and ten-foot outsided shoulders (four-foot paved) are proposed for the project.

Proposed right of way for the project ranges between approximately 200 feet to 300 feet. Right of way widths greater than 300 feet may be required in some areas with high fill slopes. Partial control of access is proposed for the portion of the project which involves widening existing US 221 from north of US 74 Bypass to south of Poors Ford Road. Full control of access is proposed for the new location portion of the project from south of Poors Ford Road to north of US 64. Limited control of access (access from public roads only, no driveways) is proposed for the new location portion of the project from north of US 64 to existing US 221 north of Rutherfordton. Partial control of access (one access per parcel for properties with no other access) is proposed for the portion of the project which involves widening existing US 221 between Old US 221 and Roper Loop Road.

### Cost Estimates

The latest cost estimates for the project are presented on Table A-1 below.

**Table A-1**  
**Project Cost Estimates**

<b>Right of Way Acquisition</b>	\$44,365,000
<b>Utility Relocation</b>	\$4,771,000
<b>Wetland/Stream Mitigation</b>	\$7,400,000
<b>Construction</b>	\$142,000,000*
<b>Total Cost</b>	\$198,536,000

\* - Does not include cost of noise walls.

### Summary of Impacts

Anticipated impacts of the selected alternative are shown below.

**Table A-2**  
**Summary of Anticipated Impacts**  
**of Selected Alternative (Alternative 3)**

<b>Residential Relocates</b>	105
<b>Business Relocates</b>	28
<b>Wetlands Affected (Acres)</b> <b>(Delineated)</b>	0.76
<b>Stream Impacts</b> <b>(Feet)</b>	9,889
<b>Dwarf-Flowered Heartleaf</b> <b>Impacts (Acres)</b>	0.23
<b>Forested Areas (Acres)</b>	197
<b>Impacted Noise Receptors</b>	22
<b>Length New Location (Miles)</b>	7.2
<b>Total Length (Miles)</b>	8.5
<b>Total Cost (Millions)</b>	\$198.536*

Impacts and costs based on current design and field surveys.

\* - Does not include cost of noise walls.

**APPENDIX B**

**REVISIONS TO THE STATE FEIS**

## **APPENDIX B REVISIONS TO THE STATE FEIS**

### **Existing/Future Traffic Volumes**

Sections 1.3.2.1 and 1.3.2.3 of the state FEIS present existing (2010) and future (2030) traffic volumes along US 221 in the project area. Section 2.3.3.1 of the state FEIS presents the 2010 and 2030 traffic projections for the detailed study alternatives.

Since completion of the state FEIS, an updated traffic forecast has been obtained for use in design. These new traffic projections were produced for the years 2012 and 2040. The 2012 no-build traffic projections were based on current traffic counts. The 2040 traffic projections were estimated using 2010 census data, 2010 AADT estimates, historic traffic count projections and population projections.

This latest traffic forecast is showing lower current and future traffic volumes than the traffic forecast available for the state FEIS. Although traffic volumes are lower, portions of existing US 221 are currently operating at levels of service E or F and will continue to do so in the future. The purpose and need for the proposed project remains valid since there are still capacity deficiencies along existing US 221 under current and future traffic conditions presented in the updated forecast.

### **Updated No-Build Traffic Volumes**

According to the updated traffic forecast, estimated average daily traffic volumes in 2012 for US 221 in the vicinity of Rutherfordton range from 5,100 to 8,700 vehicles per day without the proposed project. In the year 2040, average daily traffic volumes for US 221 in the vicinity of Rutherfordton are expected to range between 7,500 and 12,100 vehicles per day. Figure B1 of this document presents the 2012 and 2040 no-build traffic projections.

### **Updated Build Traffic Volumes (Alternative 3)**

Updated traffic forecasts were only obtained for the selected alternative for the project (Alternative 3). In the year 2040, average daily traffic volumes for the proposed bypass are expected to range between 8,000 and 14,500 vehicles per day. Projected average daily traffic volumes for the years 2012 and 2040 for the proposed bypass and the surrounding roadway network are shown on Figure B3.

### **Existing/Future Levels of Service (No-Build)**

Even though the latest traffic forecasts are showing less traffic than earlier forecasts, portions of existing US 221 in the project area are currently operating at levels of service E or F and will continue to do so in the future. Figure B2 presents the 2012 and 2040 no-build levels of service.



### **Existing/Future Levels of Service (Build)**

As shown on Figure B4, the proposed bypass will operate at level of service A in both 2012 and 2040.

### **Updated Noise Analysis**

NCDOT's Traffic Noise Abatement Policy was revised on July 13, 2011, following completion of the state FEIS. A design noise report was prepared for the selected alternative (Alternative 3) following completion of the state FEIS. The updated traffic forecast and latest design was used for this analysis. Updates to the traffic noise information provided in the state FEIS are presented below. A copy of the unabridged version of the Design Noise Report can be viewed at the NCDOT Century Center Complex, 1000 Birch Ridge Drive, Raleigh.

### **Physical Environment Characteristics-Noise Characteristics**

Section 3.3.1 of the state FEIS presents the ambient noise levels in the project area. This information was updated during preparation of the design noise report. According to ambient noise measurements and the predictions of validated traffic noise models, the loudest-hour equivalent noise levels at noise sensitive areas of frequent human use in the study area range from 48 to 66 dB(A).

### **Impacts to the Physical Environment-Noise**

Section 4.3.1 of the state FEIS presents the anticipated impacts of the project due to traffic noise.

### **Traffic Noise Impacts and Noise Contours**

Table 4-2 of the state FEIS presents the predicted traffic noise impacts for the project alternatives in the year 2030. As Table 4-2 of the state FEIS shows, Alternative 3, the selected alternative, would affect nine properties due to traffic noise in the year 2030. Alternative 3 would impact more properties due to traffic noise than any of the other alternatives studied.

Based on the results of the 2013 design noise report, 22 receptors would be impacted by Alternative 3 in the year 2040. Two receptors are impacted under existing conditions (year 2012 traffic, no-build). Eight receptors would be affected in the year 2040 if the project was not built.

### **Traffic Noise Abatement Measures**

NCDOT policy requires that noise abatement measures be considered for all receptors predicted to experience a noise impact. Measures to be considered include highway alignment selection, traffic systems management, buffer zones, land use controls, noise barriers and earth berms.

The July 2011 NCDOT Traffic Noise Abatement Policy outlines the criteria for determining if a noise abatement measure is feasible and reasonable. A noise barrier will be considered feasible if it is predicted to reduce traffic noise levels by at least five dB(A) at one impacted receptor. Engineering feasibility of noise abatement considers adverse impacts to property access, drainage, topography, utilities, safety and maintenance requirements. A noise barrier is evaluated for its reasonableness based on a maximum allowable base quantity of wall or berm and its ability to effectively reduce traffic noise. The maximum allowable base quantity of noise walls and/ or earthen berms per receptor is 2,500 square feet of wall and 7,000 cubic yards of berm, respectively. An incremental increase of 35 square feet for noise walls and 100 cubic yards for earthen berms is added to the base quantity per the average increase in dB(A) between existing and predicted exterior noise levels of all impacted receptors within each noise sensitive area. At least one benefitted front row receptor must achieve the noise reduction design goal of seven dB(A) to indicate effective reduction of traffic noise.

Substantially changing the highway alignment to minimize noise impacts is not considered a viable option for this project due to engineering and/or environmental factors. Traffic management measures such as prohibition of truck traffic, lowering speed limits, limiting of traffic volumes, and/or limiting time of operation were considered but are not practicable because they would diminish the capacity of the highway facility. The purpose of the proposed project is to reduce congestion, improve safety, and improve travel time for traffic using the US 221 corridor in the vicinity of Rutherfordton. Acquiring buffer zones would not be practical and/or cost effective for noise mitigation due to the substantial amount of right of way required, and would not be a feasible noise mitigation measure for this project. In addition, the associated costs to acquire a buffer zone would exceed the NCDOT reasonable abatement cost threshold per benefitted receptor.

One of the most effective means to prevent future traffic noise impacts is the proper use of land use controls. Local jurisdictions with zoning control should use the information contained in the project design noise report to develop policies and/or ordinances to limit the growth of noise-sensitive land uses located adjacent to the proposed project. However, regulation of land use is not within the authority of NCDOT.

Highway noise barriers are primarily constructed as earth berms or solid-mass walls. To be effective, a noise barrier must be long enough and tall enough to shield impacted receptors. Generally, the noise wall length must be eight times the distance from the barrier to the receptor.

For the proposed bypass, ten noise barriers were evaluated in detail and assessed for feasibility and reasonableness. Of these, five were determined to be feasible and reasonable. These are described below and shown on Figure B5.

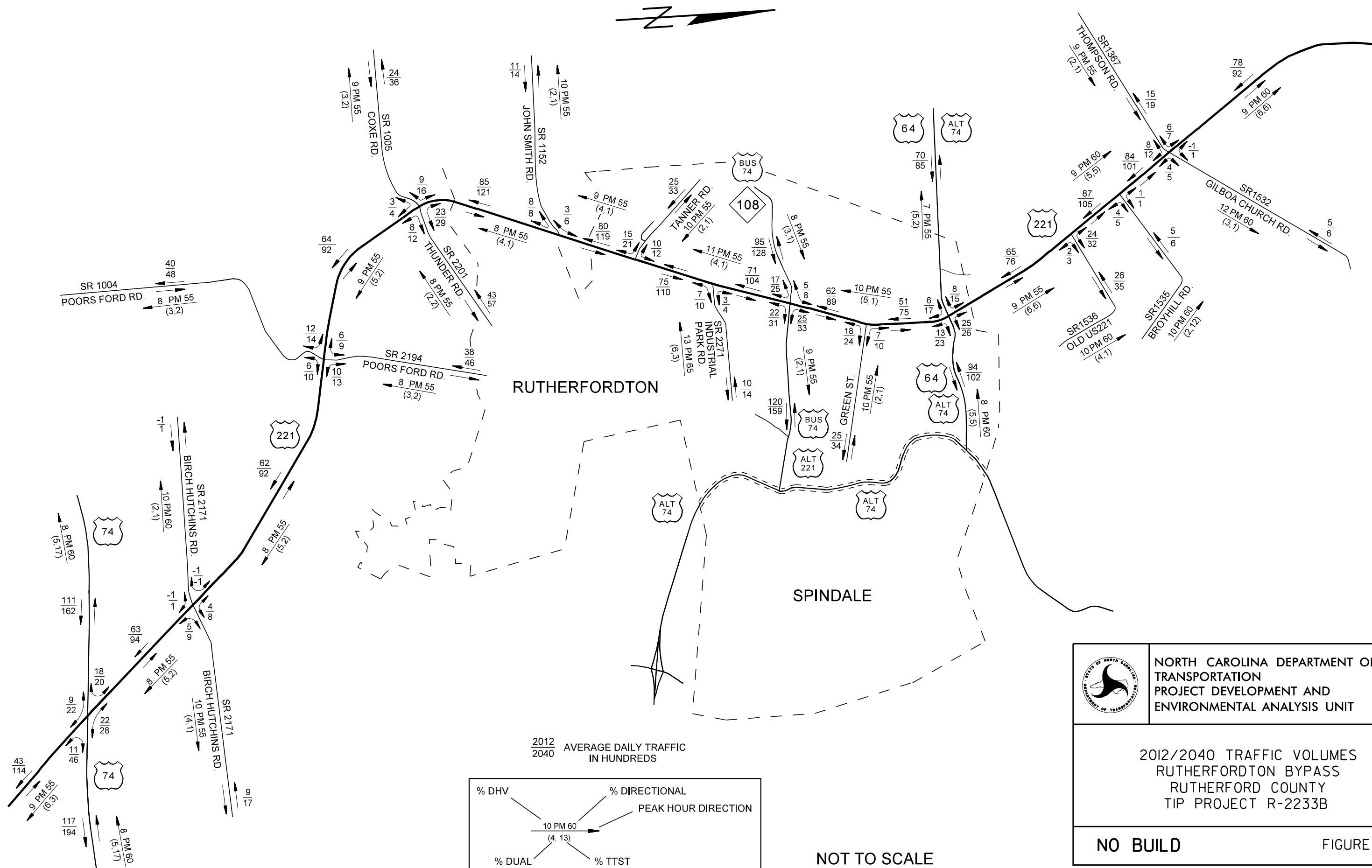
- NWD-1 - Northbound US 221 Bypass near Collett Street and Green Street
- NWD-2 - Northbound US 221 Bypass north of Green Street
- NWE-2 - Southbound US 221 Bypass from near Reese Street to US 64
- NWH-2 - Northbound US 221 Bypass along SR 1536 (Old US 221) south of SR 1535 (Broyhill Road)
- NWI-1 - Southbound US 221 Bypass near Cedar Lane and Sassafras Road


Property owners and residents of all the noise receptors that would benefit from construction of the five likely noise barriers will be sent ballots to allow them to vote on whether or not they want the noise barrier that will benefit their property or residence. One owner ballot and one resident ballot will be solicited from each benefited receptor. Three points per ballot will be assigned to front row property owners, one point per ballot will be assigned to all other benefited property owners and to all residents. Consideration of the noise barriers will continue unless a simple majority of the distributed points are returned indicating the balloted voters do not want the abatement measure.

### **Summary**

Based on the traffic noise analysis, traffic noise abatement is recommended at five locations along the proposed bypass.

In accordance with the 2011 NCDOT Traffic Noise Abatement Policy, the federal and state governments are no longer responsible for providing noise abatement measures for new development within the noise impact area of the proposed highway for which building permits are issued after the Date of Public Knowledge. The Date of Public Knowledge of the location and potential noise impacts of this proposed highway project is the approval date of this State Record of Decision. After this date, it is the responsibility of local governments and private landowners to ensure that noise compatible designs are used for development permitted after the Date of Public Knowledge.



	NORTH CAROLINA DEPARTMENT OF TRANSPORTATION PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS UNIT
	2012/2040 TRAFFIC VOLUMES RUTHERFORDTON BYPASS RUTHERFORD COUNTY TIP PROJECT R-2233B
	NO BUILD <span style="float: right;">FIGURE BI</span>

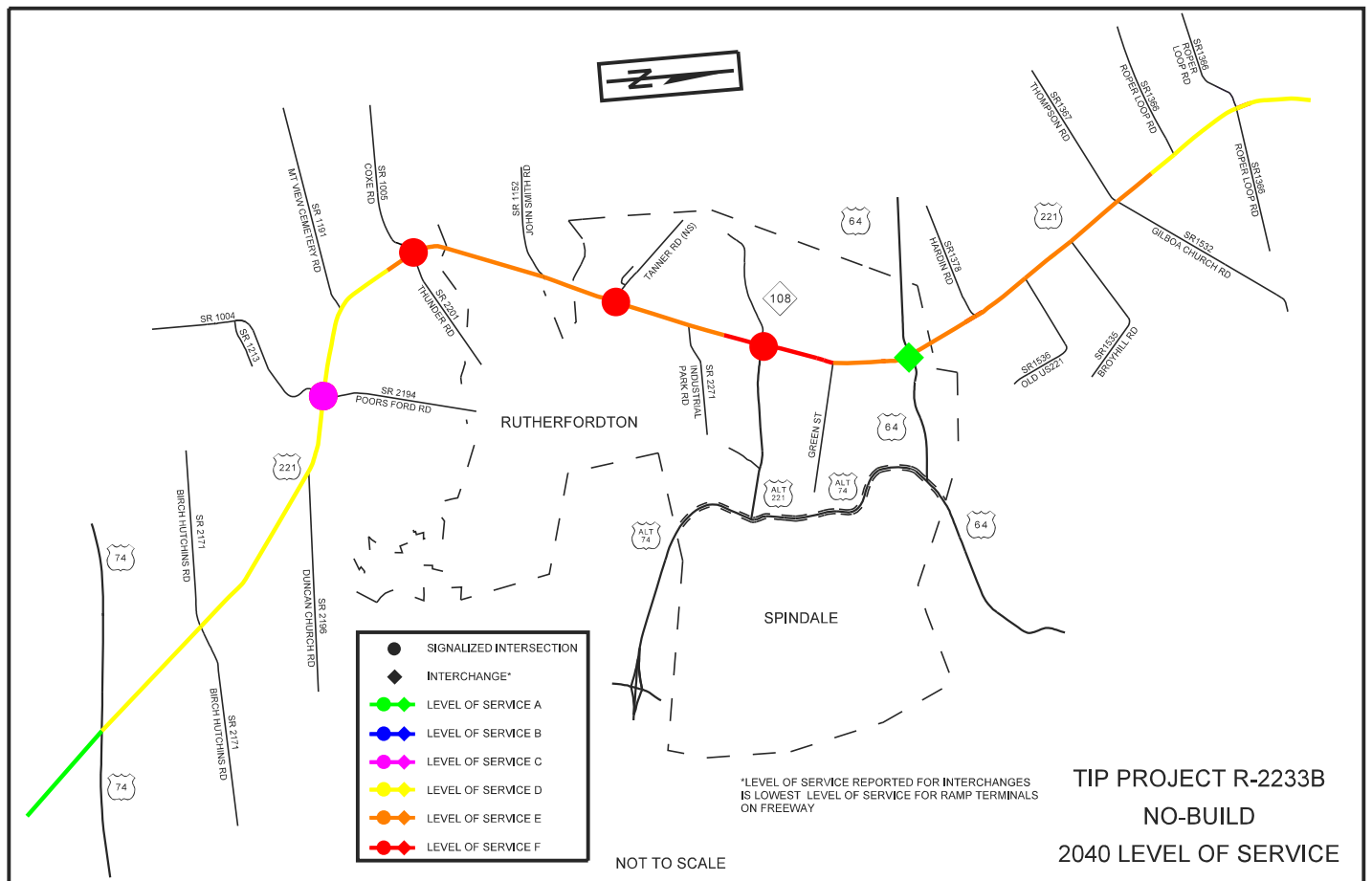
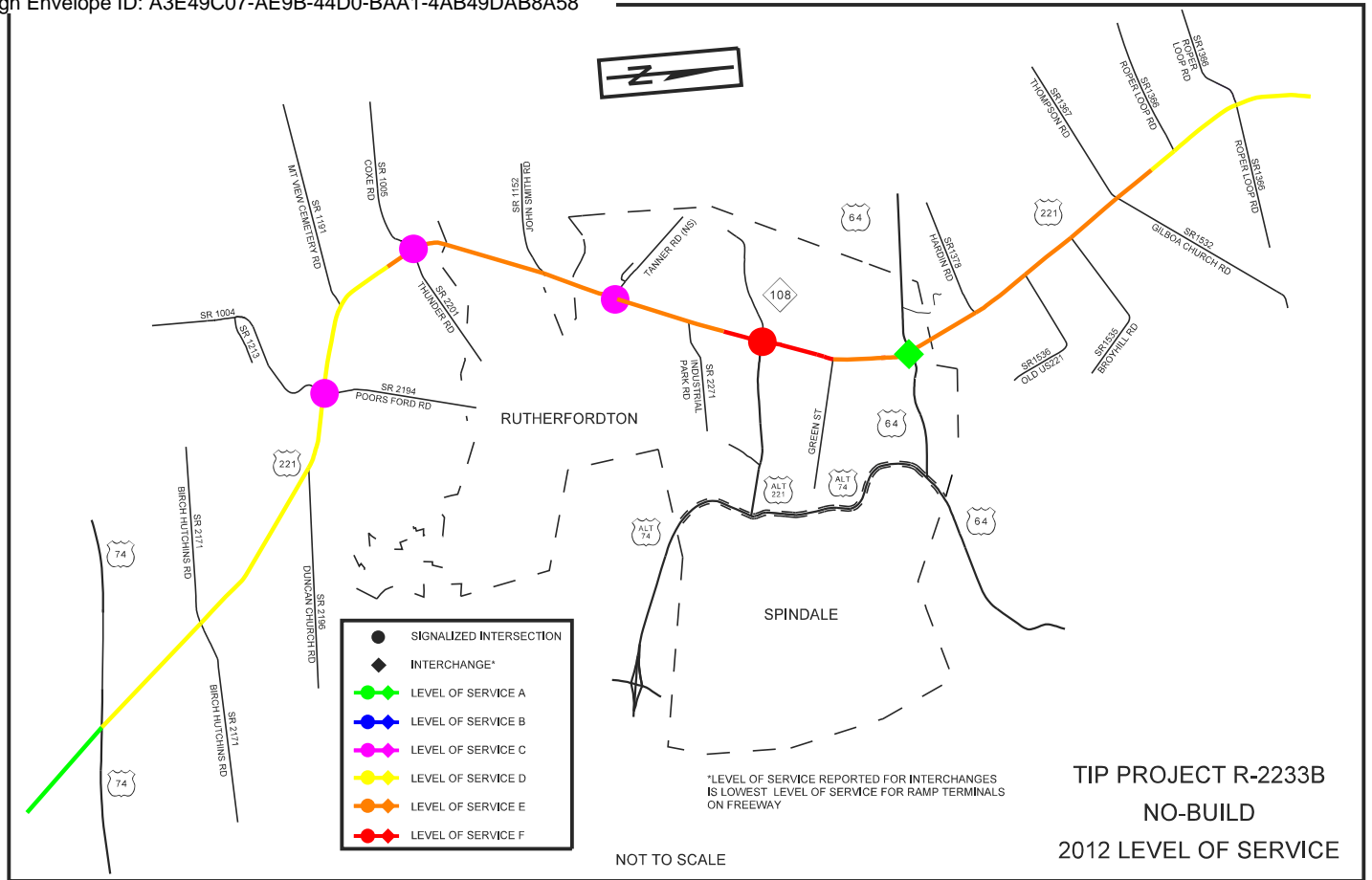
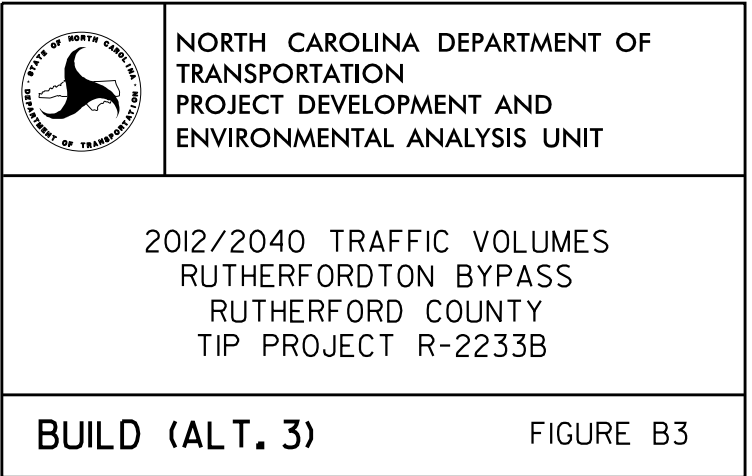
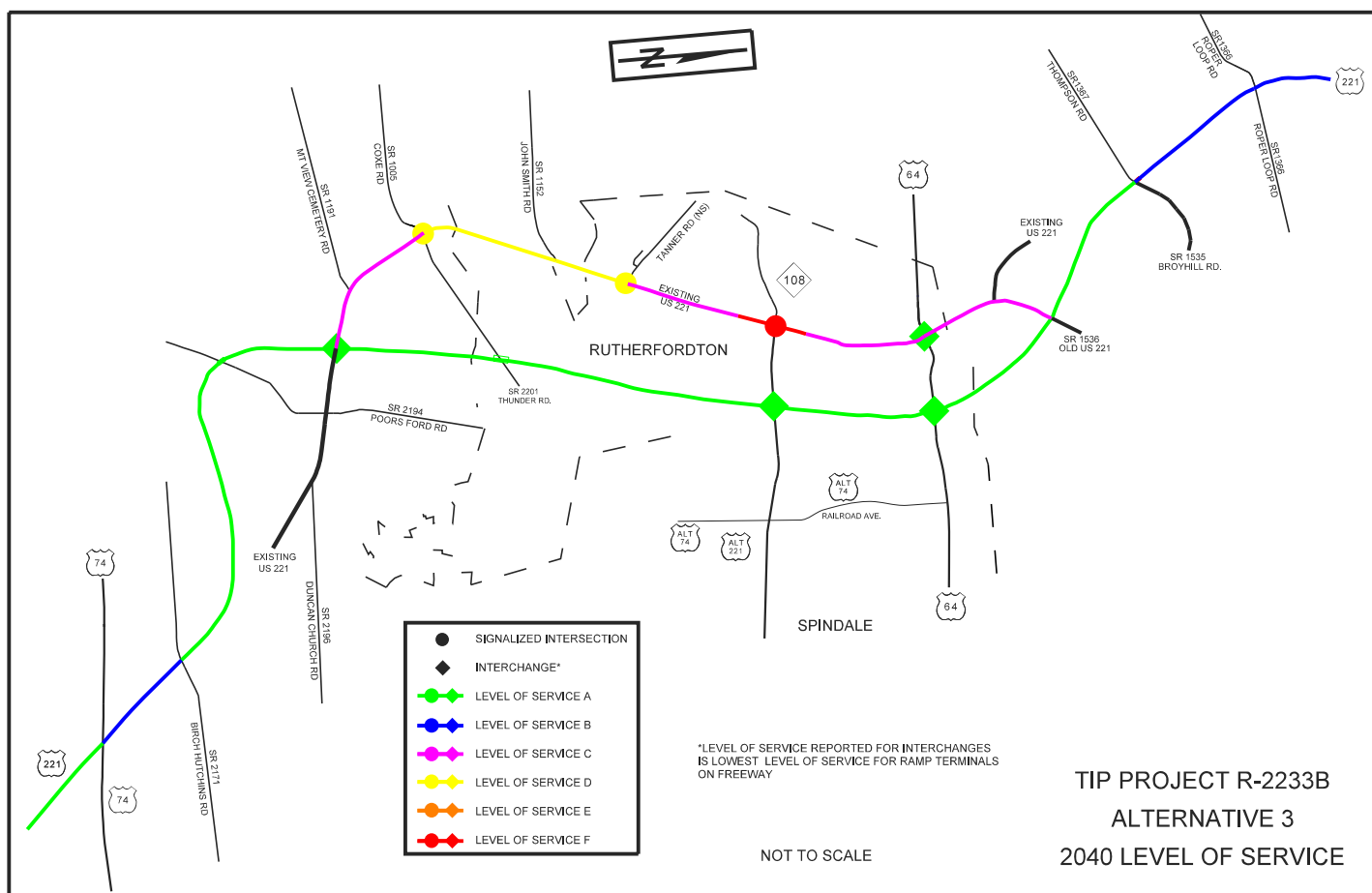
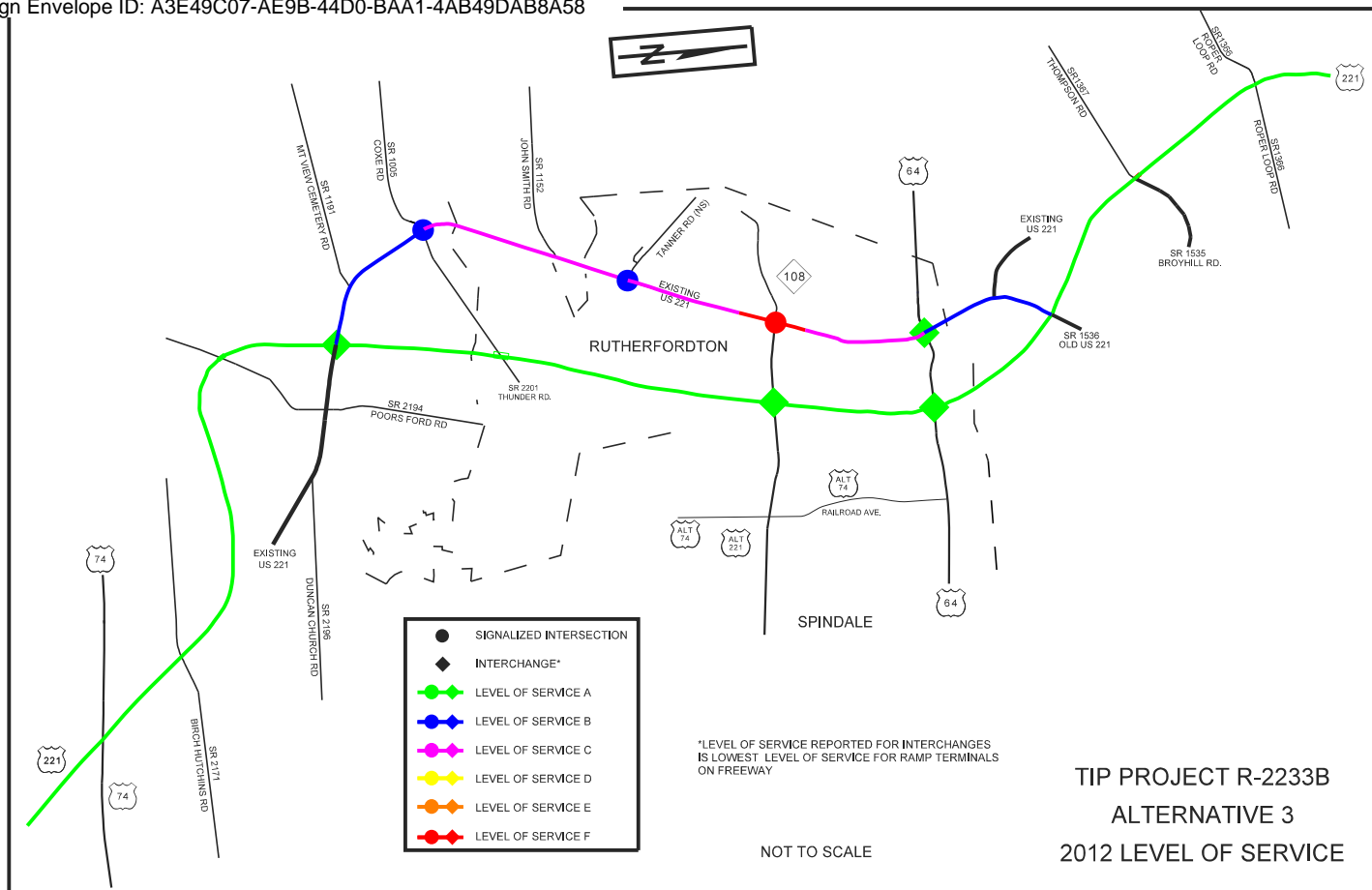


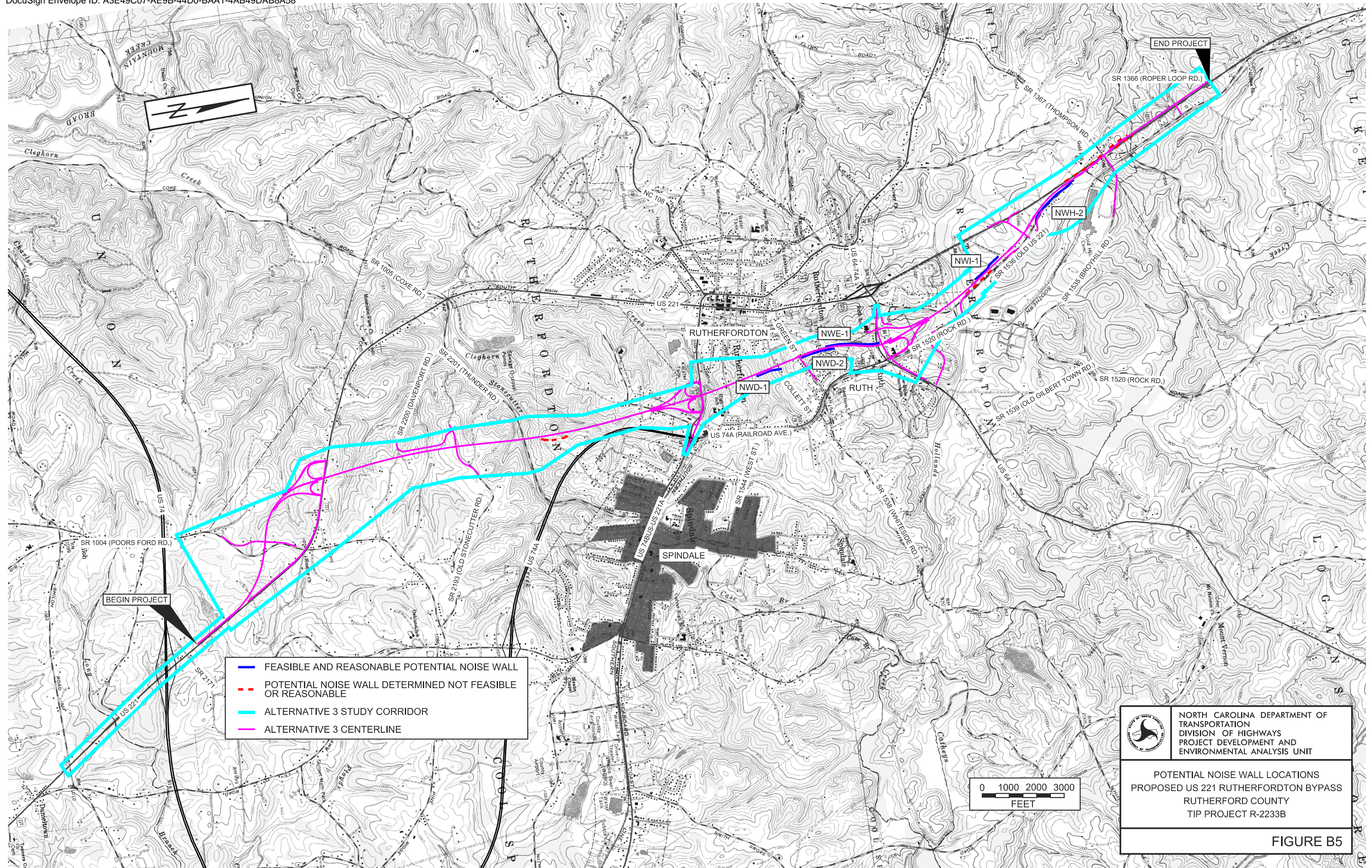
FIGURE B2





**FIGURE B4**







**APPENDIX C**

**COMMENTS ON THE STATE FEIS**

## **APPENDIX C**

### **COMMENTS ON THE STATE FEIS**

The following substantive comments were received on the SFEIS.

#### **US Environmental Protection Agency**

**COMMENT:** "EPA notes that the impacts from Alternative 3 are different comparing Tables S-1 and S-2. Residential relocations increased from an estimated 99 to 122. Stream impacts decreased from an estimated 12,063 linear feet to 9,889 linear feet. Wetland impacts and business relocations remained unchanged between these two tables. EPA requests that NCDOT identify the reasons for the changes between the two FEIS tables in the Record of Decision (ROD)."

"Alternative 3, the preferred alternative and LEDPA, is expected to impact 12,063 linear feet of streams. Table 4-7 matches Table S-1 but does not correspond to the impact shown in Table S-2. The NCDOT should provide a detailed explanation for the differences being reported in the FEIS."

**NCDOT RESPONSE:** As stated in the notes below the tables, Tables S-1 and 4-7 of the SFEIS present the impacts of the detailed study alternatives at the time the selected alternative for the project was chosen (November 2010). Changes were made in the design of Alternative 3 following its selection. Tables S-2 and 2-14 of the SFEIS present updated information as of the publication of the SFEIS.

Similarly, Table 1 of this document (SROD) presents the impacts of the detailed study alternatives at the time the selected alternative for the project was chosen, while Table A-2 presents the current impacts and costs for Alternative 3.

**COMMENT:** "The proposed facility is being designed as a boulevard type facility with at least 4 travel lanes and a 46-foot median with either partial or limited control of access. NCDOT proposes a 70 miles per hour (MPH) design speed for portions of the project with a 46-foot median. The NCDOT also proposes a 23-foot raised median and curb and gutter section with a ten-foot berm for portions of the bypass along the existing US 74 Alternative facility. EPA recommends that NCDOT consider one typical section for the entire bypass facility. According to the NCDOT's Strategic Highway Corridor guidelines, a boulevard facility is typically posted with a 30 to 55 MPH speed limit and allows for traffic signals and driveway access."

**NCDOT RESPONSE:** Four lanes with a 46-foot median is proposed for the entire project with the selected alternative. The 23-foot median EPA mentions in their comment was proposed for a portion of Alternative US74A, which was not selected for the project.

The majority of the new location portion of the proposed bypass will be a freeway with full control of access and interchanges. The section of the bypass north of US 64

and other portions of the project which involve widening existing US 221 will be an expressway with partial control of access.

**COMMENT:** “Of the 99 residential relocations, 18 are predicted to be minority-owned. The FEIS identifies a Title VI Evaluation and the assessment includes most information typically performed for an Environmental Justice (EJ) evaluation. However, the FEIS does not identify specific requirements under Executive Order 12898 that the U.S. Army Corps of Engineers (USACE) will need to consider this requirement in its permit decision for this state-funded project. The FEIS identifies two potential minority and low-income neighborhoods including Second Street and Laurel Hill. EPA recommends that additional details concerning an EJ analysis be provided for both minority populations and low-income populations consistent with other state-funded projects and presented in the ROD.”

**NCDOT RESPONSE:** As EPA points out in their comment, a Title VI evaluation was conducted for the project and included in the SFEIS. In practice, there is very little difference between an environmental justice evaluation and a Title VI evaluation. NCDOT acknowledges that the Corps of Engineers, as a federal agency, will need to consider Executive Order 12898 in their permit decision for this project. NCDOT can assist the Corps in conducting their evaluation, if needed.

**COMMENT:** “Alternative 3 will impact 87 acres under the NRCS criteria for being classified as prime farmlands. Two properties are considered as farmland preservation properties which Rutherford County considers the equivalent of Voluntary Agricultural Districts. The FEIS does not identify any opportunities for avoiding the conversion of these prime farmlands to non-agricultural uses or minimization measures for reducing the potential impacts to farming operations.”

**NCDOT RESPONSE:** Due to their location, avoiding areas with prime farmland soils is not possible. The project design has been modified as the project has progressed in an attempt to minimize the overall impacts of the project. Additional design changes may be considered to reduce project impacts on farm operations following coordination with property owners during right of way acquisition.

**COMMENT:** “Alternative 3 may also impact the Reeves Brothers property which is described in the FEIS as an ‘inactive Superfund site’. Following completion of a site assessment additional information should be incorporated into the ROD regarding any contamination discovered.”

**NCDOT RESPONSE:** A preliminary site assessment will be performed on the Reeves Brothers property following publication of this document but prior to right of way acquisition.

## **NC Department of Agriculture and Consumer Services**

**COMMENT:** "The North Carolina Department of Agriculture and Consumer Services (NCDA&CS) is concerned about the conversion of North Carolina's farm and forest lands to other uses. Due to the importance of agricultural activities in the area, as well as the economy of the entire state, NCDA&CS strongly encourages the project planners to avoid conversion of agricultural land to other uses whenever possible. When avoidance is not possible, all reasonable efforts to minimize impacts to agricultural operations and agricultural land should be implemented."

**NCDOT RESPONSE:** Impacts to farmland have been considered in the selection of Alternative 3 as the selected corridor for the project.

**COMMENT:** "There is insufficient information to determine whether appropriate consideration has been given to potential impacts to farms and farmland in the project area. In section 4.3.3, Table 4.3 indicates that the selected alternative (3) will impact 362.16 acres of Prime Farmland Soils. However, that same section also states that "Alternative 3 would affect 87 acres of prime and important farmland soil." It is unclear which of these statements is correct. It is also unclear how the selected alternative compares to other alternatives with regard to farmland impacts or whether anticipated impacts to farms and farmland were considered when alternatives were evaluated."

**NCDOT RESPONSE:** Table 4-3 presents the total amount of prime farmland soils within the 1,000-foot wide study corridor for the detailed study alternatives. Actual right of way for the alternatives will be approximately 300 feet wide. Table 4-3 is intended to provide a comparison between the alternatives. Table 4-3 shows there are 362.16 acres of prime farmland soils within the study corridor for Alternative 3. However, proposed right of way for Alternative 3 will only affect 87 acres of the 362.16 acres of prime farmland in the study corridor.

**COMMENT:** "There is also no indication that NCDOT has solicited comment from the Rutherford County Agricultural Advisory Board. The Advisory Board has responsibility to make recommendations to the Rutherford County Board of Commissioners to "increase protection from non-farm development and other negative impacts on properly managed farms." Given the importance of agriculture to this region and the entire state, it would be advisable for NCDOT to solicit comment from this Advisory Board on this important topic."

**NCDOT RESPONSE:** NCDOT has not solicited comments from the Rutherford County Agricultural Advisory Board. NCDOT adheres to the public hearing requirement of Rutherford County's Voluntary Agricultural District ordinance and requests a public hearing be held by the Agricultural Advisory Board when farmland is being condemned through Imminent Domain from within a Voluntary Agricultural District, not when a taking is negotiated as part of the right of way acquisition process. NCDOT typically requests comments on projects from county boards of commissioners, county managers

and county planning departments. These will then often solicit comments from other county agencies. NCDOT has requested comments from the Rutherford County Board of Commissioners and the Rutherford County Planning Department on the project. No concerns regarding project impacts on farmland have been raised by either of these organizations.

### **Natural Heritage Program**

**COMMENT:** “The Natural Heritage Program has a number of locations for the Federally Threatened dwarf-flowered heartleaf (*Hexastylis naniflora*) in the project area... These locations were identified in 2005, and the area encircled in black is the Davenport Road/Mountain View Rare Plant Site, of State Significance (see enclosed report).”

“The Preferred Alternative – Alternative 3 – would bisect this natural area, with the likely route of the bypass going between the two populations of the rare plant within the site. However, recent aerial photos show that the site is already fragmented in the center, with fields and a few houses. Thus, the rare plant site likely has already been fragmented, and probably should be re-drawn into two separate sites by our Program. Likely, the route can be constructed between these two populations without damage to either.”

“Several additional populations of dwarf-flowered heartleaf occur alongside existing US 221, in the southern part of the project area. One or two of these smaller populations could be impacted by the widening of US 221. Because there are a number of populations of this species in Rutherford County and in adjacent counties, we agree with the U.S. Fish and Wildlife Service’s Biological Opinion that the project will not jeopardize the continued existence of the species. However, we also support their recommendations on Page 4-19 for taking conservation measures for the species in the project area.”

**NCDOT RESPONSE:** Comment noted.

### **NC Division of Water Quality**

**COMMENT:** "In Section 4.6 Indirect and Cumulative Effects, the document references a more detailed qualitative land use assessment for indirect impacts. This assessment should be included in the FSEIS for review. In addition, the discussion of potential indirect and cumulative effects does not discuss the presence of two streams, Cleghorn Creek and Hollands Creek, in the project study area that are on the 2010 303(d) Impaired Waters list. These streams should be included in the discussion and considered in the Indirect Land Use Effects Screening Tool.”

**NCDOT RESPONSE:** As with many technical reports, the SFEIS merely presented the results of the detailed qualitative analysis rather than including the entire report. As discussed in Section 4.6 of the SFEIS, the detailed qualitative analysis indicates the project will have little to no effect on future storm water runoff or water quality in the watersheds the

project passes through. A copy of the Indirect and Cumulative Effects Screening and Land Use Scenario Assessment Report can be provided upon request.

### **NC Wildlife Resources Commission**

**COMMENT:** "Our previous comments on the State Draft Environmental Impact Statement for the project, dated November 20, 2008, were included in Appendix D of the subject document. We are disappointed that the main issues and concerns we raised in our previous comments were not addressed in the FEIS."

"Neither state listed species, nor NC Wildlife Action Plan Priority Species were addressed in the FEIS. We believe it is NCDOT's responsibility as a state agency to protect state-listed species in the construction of transportation facilities throughout the state and we request their assistance in protecting these animals.

**NCDOT RESPONSE:** There is no legal requirement for NCDOT to survey for state-listed species or species identified as Action Priority Species by the NC Wildlife Resources Commission. NCDOT biologists often will note the presence of state-listed species and will notify the Natural Heritage Program, but this is not something that is legally required.

**COMMENT:** "Strategies to minimize and mitigate the indirect and cumulative impacts of the project were also not provided. The FEIS anticipated accelerated growth from the project, but limited by current economic conditions and development trends. We continue to recommend that NCDOT and local officials work together to develop and implement strategies that will minimize negative impacts to water quality and the local fish and wildlife populations and their habitats."

**NCDOT RESPONSE:** As discussed in Section 4.6 of the SFEIS, Indirect and cumulative effects of the project are expected to be minimal. This area has lost a number of jobs and is not growing as fast as the rest of the State. Development in the area is expected to continue at a slow pace both with and without the project. Detailed qualitative analysis of the probable development patterns in the future land use study area suggest the project will have little to no effect on future storm water runoff or water quality in the watersheds the project passes through.

**RECEIVED**

JUL 19 2011

DIVISION OF HIGHWAYS

EPA OFFICE OF NATIONAL ENVIRONMENTAL



July 12, 2011

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

Dr. Gregory J. Thorpe, Ph.D., Manager  
Project Development and Environmental Analysis Branch  
North Carolina Department of Transportation  
1548 Mail Service Center  
Raleigh, North Carolina 27699-1548

SUBJECT: State Final Environmental Impact Statement for the Proposed US 221 Rutherfordton Bypass,  
Rutherford County, North Carolina; TIP Project No.: R-2233B

Dear Dr. Thorpe:

The U.S. Environmental Protection Agency Region 4 (EPA) has reviewed the subject document and is commenting consistent with Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act (NEPA). The North Carolina Department of Transportation (NCDOT) is proposing to construct a 4-lane, median divided facility on mostly new location in Rutherford County. The proposed US 221 facility is approximately 8.5 miles long and is to be located from the existing US 74 Bypass to SR 1366 (Roper Loop Road).

The proposed project has been in the NEPA/Section 404 Merger 01 process beginning in October of 2000. EPA concurred on purpose and need on October 1, 2000. Concurrence Point 2, Detailed Study Alternatives to be Carried Forward was signed on April 17, 2002. Concurrence Point 2A Bridging and Alignment Review was signed on October 25, 2007. Concurrence Point 3, the Least Environmentally Damaging Practicable Alternative (LEDPA) was signed on February 17, 2010 and the Concurrence Point 4A Avoidance and Minimization measures were signed on April 14, 2011. EPA's detailed review comments on the FEIS are provided in Attachment A.

Mr. Christopher Militscher will continue to work with you and other agencies on the continued environmental coordination activities for this project, including the hydraulic and permit review concurrence points. Please provide a copy of the Record of Decision (ROD) when it becomes available and feel free to contact Mr. Militscher or my staff at (919) 856-4206 should you have specific questions concerning EPA's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Mueller", is positioned above the typed name.

Heinz J. Mueller, Chief  
NEPA Program Office

cc: E. Hair, USACE  
P. Lespinasse, NCDENR

w/Attachment A



Attachment A  
State FEIS Detailed Review Comments  
US 221 Rutherfordton Bypass  
Rutherford County  
R-2233B

Preferred Alternative

The preferred alternative and LEDPA for the proposed project is Alternative 3. Detailed Study Alternatives (DSAs) included also Alternatives 4, 6 and US 74A. Impacts between the four DSAs are identified in Table S-1 of the FEIS. Alternative 3 was selected as the LEDPA to balance the impacts of the human and natural environment and to provide other transportation advantages to the travelling public. Alternative 3 includes 7.2 miles of new location and 1.3 miles of improvements to the existing US 221 and US 74A. EPA notes that the impacts from Alternative 3 are different comparing Tables S-1 and S-2. Residential relocations increased from an estimated 99 to 122. Stream impacts decreased from an estimated 12,063 linear feet to 9,889 linear feet. Wetland impacts and business relocations remained unchanged between the two tables. EPA requests that NCDOT identify the reasons for the changes between the two FEIS tables in the Record of Decision (ROD). The proposed facility is being designed as a boulevard type facility with at least 4 travel lanes and a 46-foot median with either partial or limited control of access. NCDOT proposes a 70 miles per hour (MPH) design speed for portions of the project on new location. Ten-foot 'grassed shoulders' with four feet paved are proposed with portions of the project with a 46-foot median. The NCDOT also proposes a 23-foot raised median and curb and gutter section with a ten-foot berm for portions of the bypass along the existing US 74 Alternative facility. EPA recommends that NCDOT consider one typical section for the entire bypass facility. According to the NCDOT's Strategic Highway Corridor guidelines, a boulevard facility is typically posted with a 30 to 55 MPH speed limit and allows for traffic signals and driveway access.

Stream and Wetland Impacts

Alternative 3, the preferred alternative and LEDPA, is expected to impact 12,063 linear feet of streams. Table 4-7 matches Table S-1 but does not correspond to the impact shown in Table S-2. The NCDOT should provide a detailed explanation for the differences being reported in the FEIS. There are 103 identified streams in the project study area. The major streams in the project study area include Stonecutter Creek, Cleghorn Creek, and Hollands Creek. There are no Outstanding Resource Waters (ORW), High Quality Waters (HQW), or 303(d) listed streams in the project study area.

Jurisdictional wetland impacts are estimated at 0.8 acres. The FEIS includes Table 3-5 identifying the wetlands in the project study, the DWQ Wetland Rating Score and the DWQ Overall Wetland Rating. None of the wetlands in the project study area are rated as being high using the DWQ method. NCDOT did not perform a wetland quality assessment using the more comprehensive NCWAM (N.C. Wetlands Assessment Methodology).

An Individual Permit from the U.S. Army Corps of Engineers is required. Section 404 avoidance and minimization measures for the preferred alternative include bridging over Stonecutter Creek with a 500-foot long bridge. Other avoidance and minimization measures include steeper side

slopes in jurisdictional areas, horizontal and vertical alignment shifts, and alternative interchange designs at two locations.

Compensatory mitigation for jurisdictional impacts is discussed on page 4-17 of the FEIS. NCDOT has not identified any potential on-site mitigation opportunities at this time. NCDOT proposes to utilize the Ecosystem Enhancement Program (EEP) for the compensatory mitigation of jurisdictional impacts.

#### Other Natural Resource Impacts

The selected alternative includes 192.6 acre impact to terrestrial forests including Mesic Mixed Hardwoods, Dry-Mesic Oak-Hickory and Pine Forests. There is one Federally-protected species that was assessed as being “May affect/Likely to Adversely Affect” under Section 7 of the Endangered Species Act. Specific conservation measures for the Dwarf-flowered Heartleaf (*Hexastylis naniflora*) are referenced on page 4-19 of the FEIS.

#### Human Resource Impacts

Residential and business relocations for Alternative 3 are shown on Tables S-1 and 4-1. However, the residential relocations do not correspond to the residential relocations shown in Table S-2. There are anticipated to be 99 or 122 residential relocations and 27 business relocations. Of the 99 residential relocations, 18 are predicted to be to minority-owned. The FEIS identifies a Title VI Evaluation and the assessment includes most information typically performed for an Environmental Justice (EJ) evaluation. However, the FEIS does not identify the specific requirements under Executive Order 12898 that the U.S. Army Corps of Engineers (USACE) will need to consider this requirement in its permit decision for this state-funded project. The FEIS identifies two potential minority and low-income neighborhoods including Second Street and Laurel Hill. EPA recommends that additional details concerning an EJ analysis be provided for both minority populations and low-income populations consistent with other state-funded projects and presented in the ROD.

Impacted noise receptors are shown in Table 4-2 as 9 residences. Total farmland impacts are identified in Table 4-3 and represent a maximum of 362.2 acres based upon soil types within the study corridor. Alternative 3 will impact 87 acres under the NRCS criteria for being classified as prime farmlands. Two properties are considered as farmland preservation properties which Rutherford County considers the equivalent of Voluntary Agricultural Districts. The FEIS does not identify any opportunities for avoiding the conversion of these prime farmlands to non-agricultural uses or minimization measures for reducing the potential impacts to farming operations. Alternative 3 may also impact the Reeves Brothers property which is described in the FEIS as an ‘inactive Superfund site’. Following the completion of a site assessment additional information should be incorporated into the ROD regarding any contamination discovered.



## North Carolina Department of Administration

Beverly Eaves Perdue, Governor

Moses Carey, Jr., Secretary

August 2, 2011

Mr. Gregory Thorpe  
NC Department of Transportation  
Program Dev. & Env. Analysis  
1548 Mail Service Center  
Raleigh, NC 27699-1548

**Re: SCH File # 11-E-4220-0321; FEIS; Proposal to construct the US 221 Bypass of Rutherfordton in Rutherford County as a four-lane roadway with a 46-ft median. TIP No. R-2233B**

Dear Mr. Thorpe:

The above referenced environmental impact information has been reviewed through the State Clearinghouse under the provisions of the North Carolina Environmental Policy Act.

Attached to this letter are comments made in the review of this document. Based on a consideration of the comments it has been determined that no additional State Clearinghouse environmental review action on your part is needed for compliance with the North Carolina Environmental Policy Act. A Record of Decision pursuant to NCAC 25.606 should be filed with the State Clearinghouse. The attached comments should be taken into consideration in project development and where appropriate discussed in the Record of Decision.

Best regards.

Sincerely,



Sheila Green

State Environmental Review Clearinghouse

Attachments

cc: Region C

**Mailing Address:**  
1301 Mail Service Center  
Raleigh, NC 27699-1301

**Telephone:** (919)807-2425  
Fax (919)733-9571  
State Courier #51-01-00  
e-mail [state.clearinghouse@doa.nc.gov](mailto:state.clearinghouse@doa.nc.gov)

**Location Address:**  
116 West Jones Street  
Raleigh, North Carolina



Steven W. Troxler  
Commissioner

North Carolina Department of Agriculture  
and Consumer Services  
*Agricultural Services*

Vernon N. Cox  
Environmental Programs  
Specialist

July 27, 2011

Ms. Sheila Green  
State Clearinghouse  
N.C. Department of Administration  
1301 Mail Service Center  
Raleigh, North Carolina 27699-1301

State #: 11-E-4220-0321  
RE: Proposal for TIP No. R-2233B



Dear Ms. Green:

Thank you for the opportunity to comment on the proposed US 221 Rutherfordton Bypass from US 74 Bypass to SR 1366 (Roper Loop Road) in Rutherford County. The North Carolina Department of Agriculture and Consumer Services (NCDA&CS) is concerned about the conversion of North Carolina's farm and forest lands to other uses. Due to the importance of agricultural activities in the area, as well as the economy of the entire state, NCDA&CS strongly encourages the project planners to avoid conversion of agricultural land to other uses whenever possible. When avoidance is not possible, all reasonable efforts to minimize impacts to agricultural operations and agricultural land should be implemented.

There is insufficient information to determine whether appropriate consideration has been given to potential impacts to farms and farmland in the project area. In section 4.3.3, Table 4.3 indicates that the selected alternative (3) will impact 362.16 acres of Prime Farmland Soils. However, that same section also states that "Alternative 3 would affect 87 acres of prime and important farmland soil." It is unclear which of these statements is correct. It is also unclear how the selected alternative compares to other alternatives with regard to farmland impacts or whether anticipated impacts to farms and farmland were considered when alternatives were evaluated. There is also no indication that NCDOT has solicited comment from the Rutherford County Agricultural Advisory Board. The Advisory Board has responsibility to make recommendations to the Rutherford County Board of Commissioners to "increase protection from non-farm development and other negative impacts on properly managed farms." Given the importance of agriculture to this region and the entire state, it would be advisable for NCDOT to solicit comment from this Advisory Board on this important topic.

Respectfully,

Vernon N. Cox  
Environmental Programs Specialist

E-mail: [vernon.cox@ncagr.gov](mailto:vernon.cox@ncagr.gov)  
1001 Mail Service Center, Raleigh, North Carolina, 27699-1001 (919) 707-3070 • Fax (919) 716-0105  
TTY: 1-800-735-2962 Voice: 1-877-735-8200  
An Equal Opportunity Affirmative Action Employer





North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue  
Governor

Dee Freeman  
Secretary

MEMORANDUM

TO: Sheila Green  
State Clearinghouse

FROM: Melba McGee *[Signature]*  
Project Review Coordinator

RE: 11-0321 FEIS - Proposed Construction of the US 221 Bypass of  
Rutherfordton in Rutherford County

DATE: August 1, 2011



The Department of Environment and Natural Resources has reviewed the proposed project.

There are a number of concerns that need to be addressed prior to this project moving forward. We ask that the Department of Transportation work directly with our commenting agencies during the NEPA Merger Process. This will help avoid delays at the permit phase.

Thank you for the opportunity to comment on this project.

Attachments



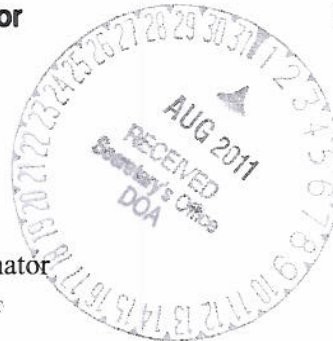
North Carolina Department of Environment and Natural Resources  
**Office of Conservation, Planning, & Community Affairs**

Beverly Eaves Perdue, Governor

**Linda Pearsall, Director**

Dee Freeman, Secretary

July 20, 2011



**MEMORANDUM**

TO: Melba McGee, DENR Environmental Coordinator  
 FROM: <sup>HL</sup> Harry LeGrand, Natural Heritage Program  
 SUBJECT: Final EIS – Proposed Construction of the US 221 Bypass of Rutherfordton; Rutherford County; TIP Nos. R-2233B

REFERENCE: 11-0321

The Natural Heritage Program has a number of locations for the Federally Threatened dwarf-flowered heartleaf (*Hexastylis naniflora*) in the project area (blue areas on the enclosed map). These locations were identified in 2005, and the area encircled in black is the Davenport Road/Mountain View Rare Plant Site, of State significance (see enclosed report).

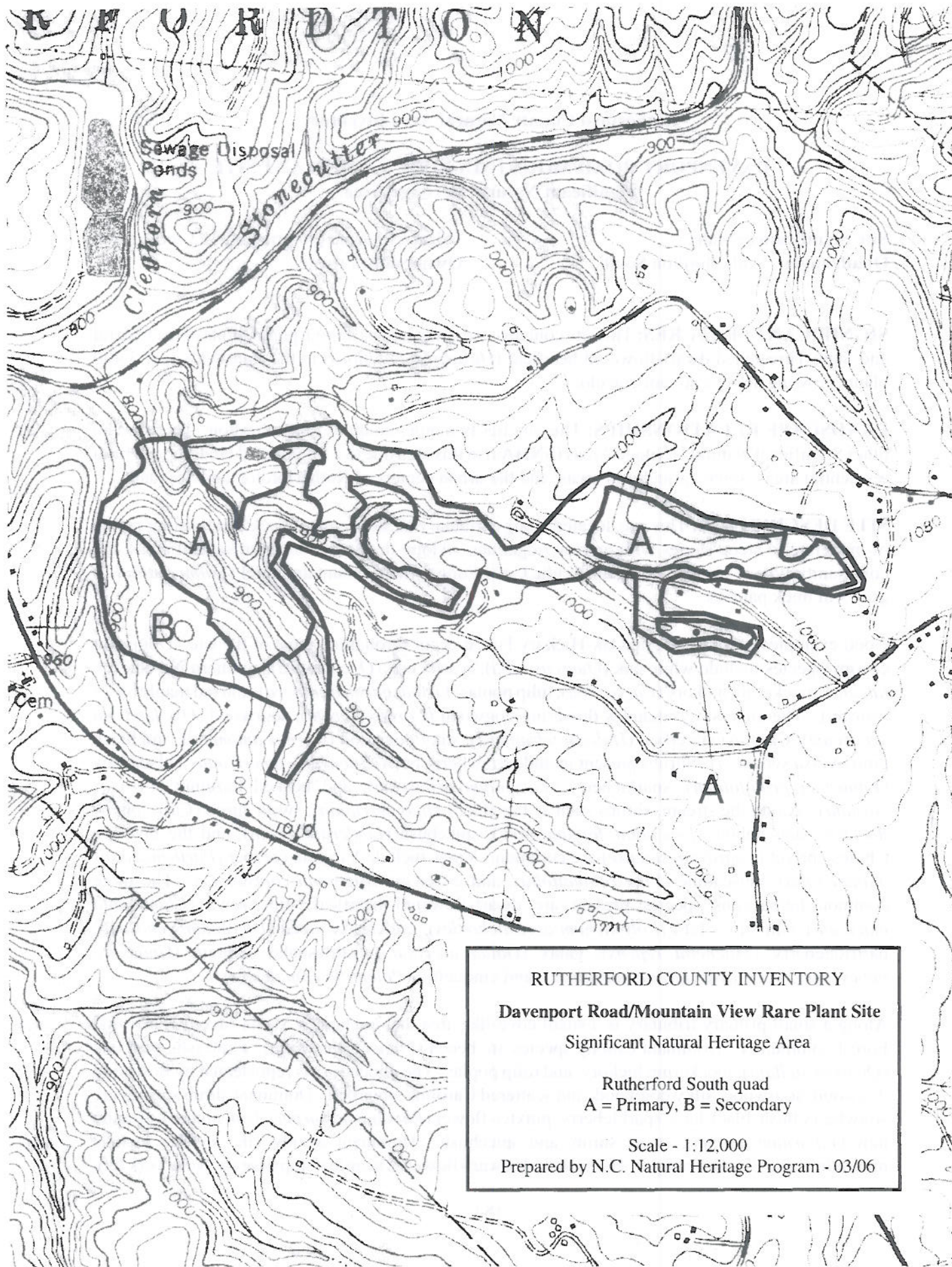
The Preferred Alternative – Alternative 3 – would bisect this natural area, with the likely route of the bypass going between the two populations of the rare plant within the site. However, recent aerial photos show that the site is already fragmented in the center, with fields and a few houses. Thus, the rare plant site likely has already been fragmented, and probably should be re-drawn into two separate sites by our Program. Likely, the route can be constructed between these two populations without damage to either.

Several additional populations of dwarf-flowered heartleaf occur alongside existing US 221, in the southern part of the project area. One or two of these smaller populations could be impacted by the widening of US 221. Because there are a number of populations of this species in Rutherford County and in adjacent counties, we agree with the U.S. Fish and Wildlife Service's Biological Opinion that the project will not jeopardize the continued existence of the species. However, we also support their recommendations on Page 4-19 for taking conservation measures for the species in the project area.

Please do not hesitate to contact me at 919-715-8697 if you have questions or need further information.

Enclosures





(*Thelypteris noveboracensis*), Christmas fern, partridgeberry, devil's-bit (*Chamaelirium luteum*), rattlesnake plantain, and Indian cucumber root (*Medeola virginiana*).

**MANAGEMENT AND PROTECTION:** This site has no formal protection, but is potentially an excellent candidate for conservation by a local land trust.

**NATURAL COMMUNITIES:** Dry-Mesic Oak–Hickory Forest and Mesic Mixed Hardwood Forest.

**RARE PLANTS:** dwarf-flowered heartleaf (*Hexastylis naniflora*); Watch List – wood rush (*Luzula multiflora*) and little sweet Betsy (*Trillium cuneatum*).

**RARE ANIMALS:** None known.

**REFERENCES:**

H.W. Lochner. 2005. Letter regarding *Hexastylis naniflora* survey data, Rutherfordton Bypass (T.I.P. R-2233A&B). 3pp

Padgett, J.E. 2005. Site Survey Report: Mountain View Rare Plant Site. N.C. Natural Heritage Program, OCCA, DENR, Raleigh, N.C.









## North Carolina Department of Environment and Natural Resources

Division of Water Quality  
Coleen H. Sullins  
Director

Beverly Eaves Perdue  
Governor

Dee Freeman  
Secretary

July 21, 2011

**MEMORANDUM**

**To:** Melba McGee, Environmental Coordinator, Office of Legislative and Intergovernmental Affairs

**From:** Brian Wrenn, Transportation Permitting Unit, NCDWQ *BW*

**Subject:** Comments on the Final State Environmental Impact Statement (FSEIS) for the proposed US 221 Bypass from US 74 to SR 1366 (Roper Loop Road) in Rutherford County, State Project No. 8.1891001, TIP Project No. R-2233B, State Clearinghouse Project No. 11-0321.

This office has reviewed the referenced document dated May 26, 2011. The NC Division of Water Quality (NCDWQ) is responsible for the issuance of the Section 401 Water Quality Certification for activities that impact Waters of the U.S., including wetlands. It is our understanding that the project as presented will result in impacts to jurisdictional wetlands, streams, and other surface waters. NCDWQ offers the following comments based on review of the aforementioned document:

**Project Specific Comments:**

1. This project is being planned as part of the 404/NEPA Merger Process. As a participating team member, NCDWQ will continue to work with the team.
2. In Section 4.6 Indirect and Cumulative Effects, the document references a more detailed qualitative land use assessment for indirect impacts. This assessment should be included in the FSEIS for review. In addition, the discussion of potential indirect and cumulative effects does not discuss the presence of two streams, Cleghorn Creek and Hollands Creek, in the project study area that are on the 2010 303(d) Impaired Waters list. These streams should be included in the discussion and considered in the Indirect Land Use Effects Screening Tool.

**General Comments:**

3. The environmental document should provide a detailed and itemized presentation of the proposed impacts to wetlands and streams with corresponding mapping. If mitigation is necessary as required by 15A NCAC 2H.0506(h), it is preferable to present a conceptual (if not finalized) mitigation plan with the environmental documentation. Appropriate mitigation plans will be required prior to issuance of a 401 Water Quality Certification.
4. Environmental impact statement alternatives shall consider design criteria that reduce the impacts to streams and wetlands from storm water runoff. These alternatives shall include road designs that

5. After the selection of the preferred alternative and prior to an issuance of the 401 Water Quality Certification, the NCDOT is respectfully reminded that they will need to demonstrate the avoidance and minimization of impacts to wetlands (and streams) to the maximum extent practical. In accordance with the Environmental Management Commission's Rules {15A NCAC 2H.0506(h)}, mitigation will be required for impacts of greater than 1 acre to wetlands. In the event that mitigation is required, the mitigation plan shall be designed to replace appropriate lost functions and values. The NC Ecosystem Enhancement Program may be available for use as wetland mitigation.
6. In accordance with the Environmental Management Commission's Rules {15A NCAC 2H.0506(h)}, mitigation will be required for impacts of greater than 150 linear feet to any single stream. In the event that mitigation is required, the mitigation plan shall be designed to replace appropriate lost functions and values. The NC Ecosystem Enhancement Program may be available for use as stream mitigation.
7. Future documentation, including the 401 Water Quality Certification Application, shall continue to include an itemized listing of the proposed wetland and stream impacts with corresponding mapping.
8. NCDWQ is very concerned with sediment and erosion impacts that could result from this project. NCDOT shall address these concerns by describing the potential impacts that may occur to the aquatic environments and any mitigating factors that would reduce the impacts.
9. An analysis of cumulative and secondary impacts anticipated as a result of this project is required. The type and detail of analysis shall conform to the NC Division of Water Quality Policy on the assessment of secondary and cumulative impacts dated April 10, 2004.
10. NCDOT is respectfully reminded that all impacts, including but not limited to, bridging, fill, excavation and clearing, and rip rap to jurisdictional wetlands, streams, and riparian buffers need to be included in the final impact calculations. These impacts, in addition to any construction impacts, temporary or otherwise, also need to be included as part of the 401 Water Quality Certification Application.
11. Where streams must be crossed, NCDWQ prefers bridges be used in lieu of culverts. However, we realize that economic considerations often require the use of culverts. Please be advised that culverts should be countersunk to allow unimpeded passage by fish and other aquatic organisms. Moreover, in areas where high quality wetlands or streams are impacted, a bridge may prove preferable. When applicable, NCDOT should not install the bridge bents in the creek, to the maximum extent practicable.
12. Whenever possible, NCDWQ prefers spanning structures. Spanning structures usually do not require work within the stream or grubbing of the streambanks and do not require stream channel realignment. The horizontal and vertical clearances provided by bridges shall allow for human and wildlife passage beneath the structure. Fish passage and navigation by canoeists and boaters shall not be blocked. Bridge supports (bents) should not be placed in the stream when possible.
13. Bridge deck drains shall not discharge directly into the stream. Stormwater shall be directed across the bridge and pre-treated through site-appropriate means (grassed swales, pre-formed scour holes,



vegetated buffers, etc.) before entering the stream. Please refer to the most current version of NCDWQ's *Stormwater Best Management Practices*.

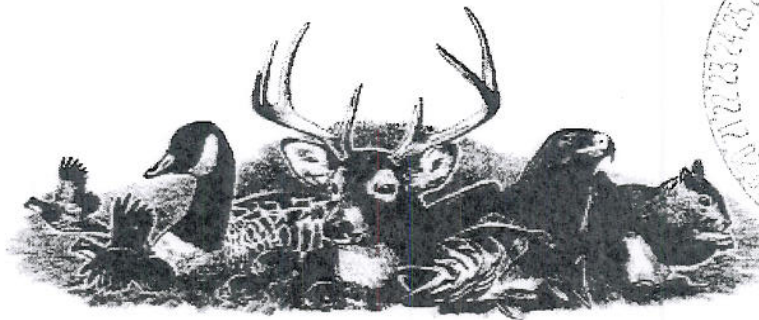
14. Sediment and erosion control measures should not be placed in wetlands or streams.
15. Borrow/waste areas should avoid wetlands to the maximum extent practical. Impacts to wetlands in borrow/waste areas will need to be presented in the 401 Water Quality Certification and could precipitate compensatory mitigation.
16. The 401 Water Quality Certification application will need to specifically address the proposed methods for stormwater management. More specifically, stormwater shall not be permitted to discharge directly into streams or surface waters.
17. Based on the information presented in the document, the magnitude of impacts to wetlands and streams may require an Individual Permit application to the Corps of Engineers and corresponding 401 Water Quality Certification. Please be advised that a 401 Water Quality Certification requires satisfactory protection of water quality to ensure that water quality standards are met and no wetland or stream uses are lost. Final permit authorization will require the submittal of a formal application by the NCDOT and written concurrence from NCDWQ. Please be aware that any approval will be contingent on appropriate avoidance and minimization of wetland and stream impacts to the maximum extent practical, the development of an acceptable stormwater management plan, and the inclusion of appropriate mitigation plans where appropriate.
18. If concrete is used during construction, a dry work area shall be maintained to prevent direct contact between curing concrete and stream water. Water that inadvertently contacts uncured concrete shall not be discharged to surface waters due to the potential for elevated pH and possible aquatic life and fish kills.
19. If temporary access roads or detours are constructed, the site shall be graded to its preconstruction contours and elevations. Disturbed areas shall be seeded or mulched to stabilize the soil and appropriate native woody species shall be planted. When using temporary structures the area shall be cleared but not grubbed. Clearing the area with chain saws, mowers, bush-hogs, or other mechanized equipment and leaving the stumps and root mat intact allows the area to re-vegetate naturally and minimizes soil disturbance.
20. Placement of culverts and other structures in waters, streams, and wetlands shall be placed below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20 percent of the culvert diameter for culverts having a diameter less than 48 inches, to allow low flow passage of water and aquatic life. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or streambeds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium is being maintained if requested in writing by NCDWQ. If this condition is unable to be met due to bedrock or other limiting features encountered during construction, please contact NCDWQ for guidance on how to proceed and to determine whether or not a permit modification will be required.
21. If multiple pipes or barrels are required, they shall be designed to mimic natural stream cross section as closely as possible including pipes or barrels at flood plain elevation, floodplain benches, and/or sills may be required where appropriate. Widening the stream channel should be avoided. Stream channel widening at the inlet or outlet end of structures typically decreases water velocity causing sediment deposition that requires increased maintenance and disrupts aquatic life passage.

22. If foundation test borings are necessary; it shall be noted in the document. Geotechnical work is approved under General 401 Certification Number 3687/Nationwide Permit No. 6 for Survey Activities.
23. Sediment and erosion control measures sufficient to protect water resources must be implemented and maintained in accordance with the most recent version of North Carolina Sediment and Erosion Control Planning and Design Manual and the most recent version of NCS000250. .
24. All work in or adjacent to stream waters shall be conducted in a dry work area. Approved BMP measures from the most current version of NCDOT Construction and Maintenance Activities manual such as sandbags, rock berms, cofferdams and other diversion structures shall be used to prevent excavation in flowing water.
25. While the use of National Wetland Inventory (NWI) maps, NC Coastal Region Evaluation of Wetland Significance (NC-CREWS) maps and soil survey maps are useful tools, their inherent inaccuracies require that qualified personnel perform onsite wetland delineations prior to permit approval.
26. Heavy equipment should be operated from the bank rather than in stream channels in order to minimize sedimentation and reduce the likelihood of introducing other pollutants into streams. This equipment shall be inspected daily and maintained to prevent contamination of surface waters from leaking fuels, lubricants, hydraulic fluids, or other toxic materials.
27. Riprap shall not be placed in the active thalweg channel or placed in the streambed in a manner that precludes aquatic life passage. Bioengineering boulders or structures should be properly designed, sized and installed.
28. Riparian vegetation (native trees and shrubs) shall be preserved to the maximum extent possible. Riparian vegetation must be reestablished within the construction limits of the project by the end of the growing season following completion of construction.

NCDWQ appreciates the opportunity to provide comments on your project. Should you have any questions or require any additional information, please contact Brian Wrenn at 919-807-6365.

cc: Lori Beckwith, US Army Corps of Engineers, Asheville Field Office  
Chris Militscher, Environmental Protection Agency (electronic copy only)  
Marla Chambers, NC Wildlife Resources Commission  
Marella Buncick, USFWS (electronic copy only)  
Mike Parker, NCDWQ Asheville Regional Office  
File Copy





## North Carolina Wildlife Resources Commission

Gordon Myers, Executive Director

TO: Melba McGee, Environmental Coordinator  
Department of Environment and Natural Resources

FROM: Marla Chambers, Western NCDOT Permit Coordinator *Marla Chambers*  
Habitat Conservation Program, NCWRC

DATE: August 1, 2011

SUBJECT: Review of the State Final Environmental Impact Statement for the proposed construction of the US 221 Bypass of Rutherfordton, Rutherford County. TIP No. R-2233B. DENR Project No. 11-0321, due 7/27/2011, extended to 8/1/2011.

North Carolina Department of Transportation (NCDOT) has submitted for review a State Final Environmental Impact Statement (FEIS) for the subject project. Staff biologists with the North Carolina Wildlife Resources Commission (NCWRC) have reviewed the information provided and are participating in the Merger 01 process for this project. These comments are provided in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d), and the Clean Water Act of 1977 (33 U.S.C. 466 et seq.).

The NCDOT proposes to construct the US 221 Bypass of Rutherfordton as a four-lane divided roadway, partly on new location. Alternative 3 has been selected as the Least Environmentally Damaging Practicable Alternative. Our previous comments on the State Draft Environmental Impact Statement for the project, dated November 20, 2008, were included in Appendix D of the subject document. We are disappointed that the main issues and concerns we raised in our previous comments were not addressed in the FEIS.

Neither state listed species, nor NC Wildlife Action Plan Priority Species were addressed in the FEIS. We believe it is NCDOT's responsibility as a state agency to protect state-listed species in the construction of transportation facilities throughout the state and we request their assistance in protecting these animals. Strategies to minimize and mitigate the indirect and cumulative impacts of the project were also not provided. The FEIS anticipated accelerated growth from the project, but limited by current economic conditions and development trends. We continue to recommend that NCDOT and local officials work together to develop and implement strategies that will minimize negative impacts to water quality and the local fish and wildlife populations and their habitats. Please see our previous comments for more details.

**Mailing Address:** Division of Inland Fisheries • 1721 Mail Service Center • Raleigh NC 27699-1721

**Telephone:** (919) 707-0020 • **Fax:** (919) 707-0028

R-2233B, Rutherfordton Bypass  
Rutherford County

Page 2

August 1, 2011

Thank you for the opportunity to review and comment on this project. We look forward to continued participation in the Merger 01 process for the development of this project. If you have any questions regarding these comments, please contact me at (704) 485-8291.

cc: Marella Buncick, USFWS  
Polly Lespinasse, NCDWQ  
Christopher Militscher, USEPA  
Lori Beckwith, USACE  
Angie Rodgers, NCNHP

STATE CLEARINGHOUSE  
DEPARTMENT OF ADMINISTRATION  
INTERGOVERNMENTAL REVIEW

COUNTY: RUTHERFORD

F02: HIGHWAYS AND ROADS

STATE NUMBER: 11-E-4220-0321

DATE RECEIVED: 06/22/2011

AGENCY RESPONSE: 07/27/2011

REVIEW CLOSED: 08/01/2011

MS HOLLY GILROY  
CLEARINGHOUSE COORDINATOR  
DEPT OF AGRICULTURE  
1001 MSC - AGRICULTURE BLDG  
RALEIGH NC

**REVIEW DISTRIBUTION**

CC&PS - DIV OF EMERGENCY MANAGEMENT  
DENR LEGISLATIVE AFFAIRS  
DEPT OF AGRICULTURE  
DEPT OF CULTURAL RESOURCES  
DEPT OF TRANSPORTATION  
ISOTHERMAL PLANN & ECON DEV

**PROJECT INFORMATION**

APPLICANT: NC Department of Transportation  
TYPE: State Environmental Policy Act  
Final Environmental Impact Statement

DESC: Proposal to construct the US 221 Bypass of Rutherfordton in Rutherford County as  
a four-lane roadway with a 46-ft median. TIP No. R-2233B

CROSS-REFERENCE NUMBER: 09-E-4220-0090

The attached project has been submitted to the N. C. State Clearinghouse for  
intergovernmental review. Please review and submit your response by the above  
indicated date to 1301 Mail Service Center, Raleigh NC 27699-1301.

If additional review time is needed, please contact this office at (919)807-2425.



AS A RESULT OF THIS REVIEW THE FOLLOWING IS SUBMITTED: ☐ NO COMMENT ☒ COMMENTS ATTACHED

SIGNED BY:

DATE:



## **APPENDIX D**

### **SECTION 106 MEMORANDUM OF AGREEMENT**

**MEMORANDUM OF AGREEMENT  
AMONG,  
THE US ARMY CORPS OF ENGINEERS,  
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE OVERMOUNTAIN VICTORY NATIONAL HISTORIC TRAIL  
FOR  
US 221 BYPASS OF RUTHERFORDTON  
RUTHERFORD COUNTY, NC  
TIP PROJECT R-2233B**

**WHEREAS**, the United States Army Corps of Engineers (USACE) has determined that the construction of US 221 Bypass of Rutherfordton in Rutherford County, North Carolina (the undertaking) will have an adverse effect upon Ruth Elementary School, a property determined eligible for the National Register of Historic Places (NRHP); and

**WHEREAS**, the undertaking will have an adverse effect on portions of the historic and commemorative routes associated with the Overmountain Victory National Historic Trail (the Trail); and

**WHEREAS** said portions of the Trail are certified and therefore included as Federal protection components of a National Historic Trail subject to the provisions of the National Trails System Act (P.L. 90-543, as amended through P.L. 111-11, March 30, 2009); and

**WHEREAS**, a Memorandum of Understanding (06-SU-11132424-196) for the National Trails System between various agencies of the federal government, including the National Park Service (NPS) and the USACE, specify responsibilities of National Trail managers and administrators, including "...planning and development of trail segments and sites along the trails, compliance, mitigation of resource damage, provision of appropriate public access, interpretation, trail maintenance, trail marking, resource and viewshed protection, and management of visitor use"; and

**WHEREAS**, the USACE has consulted with the North Carolina State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

**WHEREAS**, the North Carolina Department of Transportation (NCDOT) and the Trail Superintendent have participated in the consultation and been invited by USACE and the North Carolina SHPO to be signatories to this Memorandum of Agreement (MOA); and

**WHEREAS**, Rutherford County officials, the Rutherford County Historical Society and the Town of Rutherfordton have participated in the consultation and have been invited to concur with the MOA; and

**WHEREAS**, the USACE has notified the Advisory Council on Historic Preservation (Council) of the adverse effect and the Council has declined to comment or participate in the consultation; and

**NOW, THEREFORE**, USACE, NCDOT, the Trail, and the North Carolina SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on the historic properties.

## **STIPULATIONS**

The USACE will include the following measures as part of their permit conditions:

### **I. Ruth Elementary School Photo documentation**

Prior to the initiation of construction, NCDOT will record the existing condition of Ruth Elementary School in accordance with the attached Historic Structures and Landscape Recordation Plan (Appendix). Copies of the documentation will be deposited in the files of the State Historic Preservation Office and the files of the Historic Architecture Group of NCDOT.

### **II. Ruth Elementary School Adaptive Use Plan**

The Rutherford County Manager will establish a committee to oversee the development of an adaptive use plan for the campus and buildings of Ruth Elementary School within six months of the filing of this MOA. Members of the committee shall include representatives from the State Historic Preservation Office and the Historic Architecture Group of NCDOT along with municipal staff and local citizens with a demonstrated interest in the school and its potential redevelopment. NCDOT will provide funds not to exceed \$10,000 for use by the committee to accomplish the following tasks: identify and analyze the issues associated with reusing the structures and campus, develop alternatives for consideration, and produce an adaptive reuse plan for the site. If the Rutherford County Manager chooses not to establish the committee, no funds will be available for this study.

### **III. Ruth Elementary School Historic Context**

NCDOT will compile a historic context documenting the history of Consolidation-Era public schools within Rutherford, Polk, and Cleveland counties. The context will be used to evaluate other Consolidation-Era public schools in the future and provide a model for researching and evaluating Consolidation-Era public schools in the state's southwestern foothills. The context will compile documentary materials, bibliographical sources, National Register eligibility considerations, and digital images. The final report will be in a digital format and will be provided on a CD-ROM to the State Historic Preservation Office. Another copy of the report will be deposited in the files of the Historic

Architecture Group of NCDOT. The final digital product shall be completed and distributed within three (3) years of the execution of this MOA.

#### **IV. Overmountain Victory National Historic Trail (OVNHT)**

NCDOT will mitigate the adverse effects to the Trail through the following actions:

1. NCDOT will provide ADA-compliant pedestrian crossings at the intersection of US 64 with US 74A (Railroad Avenue) and at the trail crossing of the proposed Rock Road realignment. In addition, NCDOT will construct a sidewalk on the south side of US 64 from the intersection of US 64 with US 74A to the proposed driveway to Ruth and Trinity Schools. A sidewalk and 42-inch handrails will be provided on the south side of the proposed bridge carrying US 64 over the bypass, in order to accommodate the Trail.
2. NCDOT will provide access to Southern Street via a pathway from the vicinity of the relocated driveway for Ruth and Trinity schools in order to accommodate pedestrians who wish to follow the historic route of the OVNHT. NCDOT will design this pathway for pedestrian use and construct it in a manner that is ADA compliant to the greatest extent possible.
3. NCDOT will continue to coordinate with the NPS and the SHPO regarding the OVNHT by providing post-hydraulic design plans to the parties with a 30-day review and comment period.
4. NCDOT will install signage provided by the OVNHT to mark and indicate the status of the pathway as an certified portion of the OVNHT. The number of signs and their location will be determined in consultation with the OVNHT and in accordance with NCDOT policy.

#### **V. Unanticipated Discovery**

In accordance with 36 CFR 800.11(a), if NCDOT identifies additional cultural resource(s) during construction and determines them to be eligible for the NRHP, all work will be halted within the limits of the NRHP-eligible resource(s) and the USACE and SHPO contacted. If after consultation with the Signatory and Concurring Party(ies) additional mitigation is determined necessary, the NCDOT, in consultation with the Signatory and Concurring Party(ies), will develop and implement appropriate protection/mitigation measures for the resource(s). Inadvertent or accidental discovery of human remains will be handled in accordance with North Carolina General Statutes 65 and 70.

#### **VI. Dispute Resolution**

Should any of the Signatory or Concurring Party(ies) object within thirty(30) days to any plans or documentation provided for review pursuant to this MOA, the USACE shall consult with the objecting party(ies) to resolve the objection. If the USACE or objecting party(ies) determines that the objection cannot be resolved, the USACE will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

1. Provide the USACE with recommendations which the USACE will take into account in reaching a final decision regarding the dispute, or
2. Notify the USACE that it will comment pursuant to 36 CFR Section 800.7(c) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the USACE, in accordance with 36 CFR Section 800.7 (c) (4) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; NCDOT's responsibility to carry out all of the actions under this agreement not the subject of the dispute will remain unchanged.

## **VII. Amendments**

Should any of the Signatory or Concurring Party(ies) to this MOA believe that its terms cannot be carried out or that an amendment to the terms must be made, that party(ies) shall immediately consult with the other party(ies) to develop amendments in accordance with 36 CFR 800.6(c)(7). If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation V will be followed.

## **VIII. Termination**

Any of the Signatory Party(ies) may terminate the MOA by providing notice to the other party(ies), provided that the party(ies) will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

Termination of this MOA will require compliance with 36 CFR 800. This MOA may be terminated by the execution of a subsequent MOA that explicitly terminates or supersedes its terms.

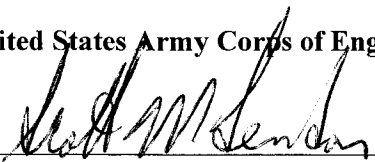
## **IX. Duration**

Unless terminated pursuant to Stipulation VII above, this MOA will be in effect until USACE, in consultation with the other Signatory and Concurring Party(ies), determines that all of its terms have satisfactorily been fulfilled or if NCDOT is unable or decides not to construct the Undertaking.

Execution of this Memorandum of Agreement by USACE, NCDOT, the North Carolina SHPO and the Trail Superintendent, its subsequent filing with the Council, and implementation of its terms evidence that USACE has afforded the Council an opportunity to comment on the Undertaking and that USACE has taken into account the effects of the Undertaking on the historic properties.

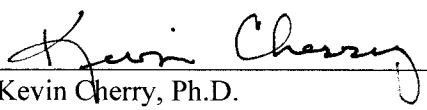
**AGREE:**

**United States Army Corps of Engineers:**

  
\_\_\_\_\_  
Steven A. Baker  
Colonel, U. S. Army  
District Commander

17 July 2013  
Date

**State Historic Preservation Officer:**

  
\_\_\_\_\_  
Kevin Cherry, Ph.D.  
North Carolina State Historic Preservation Officer

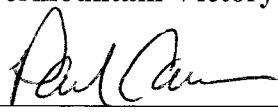
5/29/2013  
Date

**North Carolina Department of Transportation:**

  
\_\_\_\_\_  
Robert Andrew Joyner, P.E.  
Section Head, Human Environment Section, PDEA, NCDOT

5/3/13  
Date

**Overmountain Victory National Historic Trail:**

  
\_\_\_\_\_  
Paul Carson  
Superintendent, Overmountain Victory National Historic Trail

4/17/13  
Date

**FILED:**

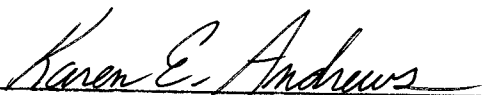
By: \_\_\_\_\_  
Advisory Council on Historic Preservation


\_\_\_\_\_  
Date

**MEMORANDUM OF AGREEMENT  
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THE US ARMY CORPS OF ENGINEERS,  
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE OVERMOUNTAIN VICTORY NATIONAL HISTORIC TRAIL  
FOR  
US 221 BYPASS OF RUTHERFORDTON  
RUTHERFORD COUNTY, NC  
TIP PROJECT R-2233B**

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**CONCUR:**

  
\_\_\_\_\_  
Karen Andrews, Manager  
Town of Rutherfordton

  
\_\_\_\_\_  
Date



**MEMORANDUM OF AGREEMENT  
AMONG,  
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**CONCUR:**



\_\_\_\_\_  
Carl Classen, Manager  
Rutherford County


*July 01, 2013*

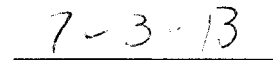
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**CONCUR:**

  
Robin Lattimore  
Rutherford County Historical Society

  
Date

## **APPENDIX**

### **HISTORIC STRUCTURES AND LANDSCAPE RECORDATION PLAN US 221 BYPASS OF RUTHERFORDTON RUTHERFORD COUNTY, NC TIP PROJECT R-2233B**

#### **PHOTOGRAPHIC REQUIREMENTS**

- ❑ Overall views of the Ruth Elementary School campus including the structures and landscape elements.

#### **PHOTOGRAPHIC FORMAT**

- ❑ All images will be captured, labeled, and stored according to the North Carolina State Historic Preservation Office's, "Policy and Guidelines for Digital Photography for Historic Property Surveys, National Register Nominations and NRAC PowerPoint Presentations, Revised April 2008."

#### **COPIES AND CURATION**

- ❑ One (1) set of all photographic documentation will be deposited with the North Carolina Division of Archives and History/State Historic Preservation Office to be made a permanent part of the statewide survey and iconographic collection.
- ❑ One (1) set of all photographic documentation will be deposited in the files of the Historic Architecture Group at NCDOT.